CITY GOVERNANCE COMMITTEE
LATE REPORTS

Date: Tuesday, 30 June, 2020
Time: 9:00 am
Location: Logan Entertainment Centre
170 Wembley Road, Logan Central

Committee Members:
Councillor Bradley (Chairperson)
Councillor Willcocks (Deputy Chairperson)
Councillor Lane
Councillor Russell
Councillor Koranski
Councillor Raven
Councillor Hall
Councillor Frazer
Councillor Heremaia
Councillor Bannan
Councillor Stemp
Councillor Murphy
His Worship the Mayor, Councillor Power
8. Confidential Documentation

8.3 Confidential Report - Future of Ben Matthews Playground in Logan Central

9. Late Reports

9.1 Covering Report - Future of Ben Matthews Playground in Logan Central 4

9.2 Proposed Procurement and Appropriations Advisory Group 9
Please retain the attached Business Paper as it will be considered in conjunction with the recommendations of the relevant Committee meeting by Council.

Councillors are reminded that if a person is convicted of an offence against the following section 171 of the Local Government Act 2009 (Use of information by councillors), that penalties apply.

171 Use of information by councillors

(1) A person who is, or has been, a councillor must not use information that was acquired as a councillor to—

   (a) gain, directly or indirectly, a financial advantage for the person or someone else; or
   
   (b) cause detriment to the local government.

Maximum penalty—100 penalty units or 2 years imprisonment.

(2) Subsection (1) does not apply to information that is lawfully available to the public.

(3) A councillor must not release information that the councillor knows, or should reasonably know, is information that is confidential to the local government.

Note—

A contravention of subsection (3) is misconduct that is dealt with by the tribunal.
REPORT OVERVIEW

EXECUTIVE SUMMARY

This report seeks direction from Council in respect of the Council property known as Ben Matthews Playground in Logan Central.

Criteria: Direction - It requires Council to make a decision of a strategic nature; or Council has specifically requested it

CORPORATE PLAN PRIORITY

Economic Transformation

Submitted under separate cover is confidential documentation relating to the above matter. This documentation is considered confidential due to the following reason: "The report includes information that is commercial-in-confidence, which would be likely to prejudice the interests of the local government or someone else, or enable a person to gain a financial advantage."

RECOMMENDATIONS

IT IS RECOMMENDED:-

1. That the property described as Lot 3 on RP 149515 and Lot 62 on RP 83242 be retained by Council to be used as recreational park for the benefit of the local community.

2. That the building and improvements on the property, as detailed in Clause 1 above, be demolished.

3. That the Finance Manager be requested to provide one-off funding of up to $75,000 plus GST from the 2018/2019 surplus for the demolition of the building and improvements, as detailed in Clause 2 above.

4. That, at the discretion of the Administration Manager, the Corporate Governance Manager be requested to place the confidential report of the Administration Manager dated 30 June 2020 into the public records.

REPORT DETAILS

INTERESTED PARTIES

This information is confidential and is included in the confidential attachments to this report.
PURPOSE OF REPORT/BACKGROUND

Council owns property referred to as Ben Matthews Playground (the 'Playground'). The Playground is located at:

1. 47-55 Ellen Street Logan Central Qld 4114 (Lot 62 on RP 83242) (10,117m²); and
2. 13 Rhea Avenue Logan Central Qld 4114 (Lot 3 on RP149515) (8,494m²).

The Playground is zoned low density residential suburban and is improved with a lowset masonry building with a metal roof and tennis, basketball and netball courts.

HISTORY

The Playground was previously occupied by the community organisation known as Arethusa College, with a lease at the Playground expiring on 15 November 2016. The College continued to hold over under the lease for a period of time however since their vacation on 31 July 2017, the Playground has remained vacant.

On 14 March 2017, Council resolved (Minute No 63/2017) that the Playground was surplus to requirements and should be sold by auction. The auction did not result in a contract of sale however a subsequent tender process produced a conditional contract of sale. That contract was ultimately terminated in August 2018 on the basis that the prospective buyer was not satisfied with their due diligence enquiries.

On 15 August 2018 investLogan was requested to consider acquisition of the Playground. investLogan explored development opportunities for the site however in late 2019 ultimately advised Council that they did not wish to pursue that opportunity.

In late 2019 and early 2020, there has been interest shown in leasing and/or purchase of the property by a number of parties.

Development Constraints

The Playground has numerous constraints, which affect the Playground’s development viability and in turn the value of the Playground itself. It is understood that the resolution of these issues by any ultimate purchaser would be cost prohibitive if approached from a development perspective.

Figure 1 – Ben Matthews Playground
Those constraints include:

1. **Overland Flow**

   Council's River and Catchment Engineering (RCE) Program has previously advised that there may be a requirement for the Playground to be retained by Council in lieu of disposal, if it is subject to significant overland flow.

   The nature of how the overland flow will be considered (as a sheet flow or open channel or pipe system) at the Playground will be informed by the findings of a flood study currently being undertaken, which speculates an overland flooding depth of up to 700mm. This is significant, considering current overlays show no flood impact.

   The flood study is currently being conducted across the whole of the city and its findings will inform this matter further. As at May 2020, the flood study is still in the modelling stage and is likely to be completed within the 2020-2021 financial year.

   If the Playground is impacted by overland flooding beyond 50 per cent, RCE has suggested it may wish for Council to retain its ownership for drainage purposes. This approach is consistent with other Council properties that are also heavily impacted by overland flow.

2. **Drainage**

   There is existing drainage infrastructure on the Playground as shown in Figure 1. Prior to any disposal of the Playground, drainage easements will be required to protect Council's infrastructure in accordance with the Queensland Urban Drainage Manual drainage policy as follows:

   - 3m for all single pipes from 300 mm up to 1350 mm diameter;
   - 1m wider than the distance between outer edges of the pipes or box culverts; and
   - width of the flow path required to carry the difference between the peak discharge for the Defined Flood Event (1% annual exceedance probability) and the capacity of the underground system together with an allowance for freeboard (buffer above design flood levels).

   The Playground requires a topographic survey in order to specify the exact location of these easements, as the locations of the pipes must first be accurately determined.

**Options for Future Management**

There are a range of options available in respect of the future management of the Playground including:

1. retention of the Playground and conversion to Park, with future planning to be undertaken;
2. disposal of the Playground to the market through a new auction process;
3. disposal of the Playground to a community organisation; or
4. leasing of the Playground to a community organisation.

Those options have been explored and the analysis around the options, which is confidential, is included in the confidential attachments to this report.
ANY PREVIOUS COUNCIL DECISIONS

On 19 January 2017, the Executive Leadership Team (ELT) met to consider the report of the Economic Development & Strategy (ED&S) Manager, which explored potential development options for the Playground. That report concluded that the Playground was unsuitable for the purpose of property development at that point in time and under current market conditions. It further recommended disposal of the Playground, in keeping with the previous ELT (then SLPT) decision of its meeting of 8 October 2015 regarding the same.

On 14 March 2017 Council resolved (Minute No 63/2017) as follows:

1. That the Administration Manager be delegated authority to dispose of the property described as Lot 3 on RP 149515 and Lot 62 on RP 83242 by way of auction, in accordance with section 227(1)(b) of the Local Government Regulation 2012.

2. That, should the property, as detailed in Clause 1 above, be passed in at auction, the Administration Manager be delegated authority to dispose of the property by private treaty, in accordance with the exception in section 236(1)(a) of the Local Government Regulation 2012.

3. That, upon the sale of the property, as detailed in Clause 1 above, the proceeds of sale, less sale costs, be placed into the community asset reserve for use in developing community facilities in Division 2.

4. That the Director of Organisational Services be delegated authority to execute any documents on behalf of Council in relation to Clause 1 above.

5. That, upon the disposal/sale of the property, as detailed in Clause 1 above, the Corporate Governance Manager be requested to place the confidential report of the Sport, Leisure & Facilities Manager dated 20 January 2017 (Id: 10788790) into the public records.

FINANCIAL/RESOURCE IMPLICATIONS

This information is confidential and is included in the confidential attachments to this report.

RISK MANAGEMENT IMPLICATIONS

The Playground is an ageing asset and there have been security issues that have arisen during the time it has remained vacant. To mitigate those risks, it is appropriate that a decision be made with respect to future management of the Playground.

LEGAL/POLICY

The Local Government Act 2009 and Local Government Regulation 2012 apply to this report.

COMMUNITY AND OTHER CONSULTATION

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Corporate Governance  
The Corporate Governance Branch has been consulted in the preparation of this report.

Economic Development and Strategy  
The Economic Development and Strategy Branch have previously provided advice to ELT that the Playground is unsuitable for development by Council.

Finance Branch  
The Finance Branch has been consulted in the preparation of this report.

Parks Branch  
The Parks Branch has advised an interest in retaining the whole of the Playground to convert it to a Park function within Logan Central, with future expansion potential. This solution would occur alongside any drainage requirements determined by the flood study.

Road Infrastructure Planning  
The Road Infrastructure Planning Branch has provided updated information regarding the overland flow impacts on the Playground. They have recommended retention of the Playground until those studies are completed.

Sport, Leisure and Facilities  
The Sport, Leisure and Facilities Branch prepared the previous report to Council which supported the disposal of the Playground.

They have also been consulted in relation to the approximate costs that might be incurred in returning the Playground to a lettable and compliant condition and offering it for lease to a community organisation.

CONCLUSION

The extent of overland flooding at the Playground has not been finalised. What is considered optimal is that the property be retained by Council. However, the building and improvements should be demolished and the space made available to the community, with future planning to be undertaken to deliver an appropriate outcome into the future.

ATTACHMENTS TABLE

No attachments.
9.2 PROPOSED PROCUREMENT AND APPROPRIATIONS ADVISORY GROUP

REPORT OF: Administration Manager

REPORT OVERVIEW

EXECUTIVE SUMMARY

The purpose of this report is to identify options for the appointment of a committee of Councillors to support Council’s procurement and appropriations activities.

Criteria: Direction - It requires Council to make a decision of a strategic nature; or Council has specifically requested it

CORPORATE PLAN PRIORITY

Next Generation Governance

RECOMMENDATIONS

IT IS RECOMMENDED:

1. That the establishment of the Procurement and Appropriations Advisory Group, as detailed in Option 3 of the report of the Administration Manager dated 30 June 2020, be endorsed.

2. That the Administration Manager be requested to establish a Terms of Reference for the Advisory Group, as detailed in Clause 1 above.

REPORT DETAILS

INTERESTED PARTIES

Nil

PURPOSE OF REPORT/BACKGROUND

The current committee structure was adopted by Council at its Post-Election meeting of 29 April 2020 and comprises four Standing Committees, along with Ordinary Council, as detailed below:

- City Governance;
- City Infrastructure;
- City Planning, Economic Development & Environment; and
- City Lifestyle.

Councillor Heremaia has proposed to establish a new ‘Procurement & Appropriations Special Committee’ (New Committee), comprised of all the Councillors, to support Council’s procurement and appropriation activities, including to identify systemic trends in Council’s procurement and appropriation activities and to provide recommendations to the City Governance Committee with a purpose of delivering long-term cost savings for Council.

Councillor Heremaia proposes that the New Committee be appointed on an ongoing basis, but that attendance by Councillors at the meetings of the New Committee be optional.
Currently, Council's existing audit and risk committee reviews non-compliance with procurement processes, and the consideration of procurement and financial policy falls within the City Governance Committee's Terms of Reference.

DISCUSSION

The key issues for consideration in respect of the establishment of a New Committee or function to provide oversight of Council’s procurement and appropriation activities are:

- the scope (Terms of Reference) for any New Committee or function; and
- the structure of the New Committee or function.

Scope (Terms of Reference) and key risks

Regardless of the structure adopted, the scope of any procurement and appropriations oversight function must be limited so that any recommendations made are not about specific procurements. Rather, the New Committee should only consider matters and make recommendations on a broader policy or strategic level.

Involvement with specific procurement, particularly prior to or during the conduct of a procurement process, poses a significant risk for Council (and councillors) from a probity perspective. When conducting a procurement, Council officers adopt strict probity procedures to ensure the integrity and fairness of the procurement processes. Adding an additional level of consideration by a councillor committee raises a process risk for the procurement, and has the potential to expose Council in the event that an unsuccessful tenderer makes a claim against Council. This issue arises both in respect of committee involvement prior to the conduct of a specific tender (for example, if the committee took on a role of reviewing and making recommendations regarding specific evaluation criteria and process) and during the deliberative process stages.

Therefore, to address this risk, the Terms of Reference in respect of the oversight function should be limited to the making of policy and strategic recommendations only. For example, the New Committee could review specific (or a group of) tenders once they are complete (on a "lessons learnt" basis) for the purpose of determining whether any adjustment is required to Council’s policy or approach for procurement generally, or for a particular class of procurements.

The other key risks for Council associated with implementing a procurement and appropriations oversight function relate to conflicts of interest and confidential information. The nature of the information to be considered as part of the undertaking an oversight function is likely to be commercial in confidence information to the tenderers in the process. Council will need to ensure that this information remains confidential. In respect of conflicts, Councillors will need to ensure that they declare and manage any conflicts in respect of the procurement and appropriation activities discussed.

Structure Option 1 - Expand City Governance Committee Terms of Reference

The first option to ensure Council has an effective forum for oversight of its procurement and appropriation activities is to extend the Terms of Reference of Council’s existing City Governance Committee.

The existing Terms of Reference for the City Governance Committee provide that, relevantly:

"(a) This Committee is the peak recommendation-making body dealing with strategy and policy as it relates to corporate governance, finance, administration, people and culture, corporate planning and reporting, information services, plant fleet and local government legislation."

Although procurement and appropriation activities are not expressly called out, it is reasonably clear that it is within the City Governance Committee’s existing scope to deal with policy and strategic issues associated with Council's procurement activities.
Council could, however, amend the existing Terms of Reference to expressly refer to the committee's role for Council's procurement and appropriation activities.

The key benefits of this approach are:

- it allows for consideration of the procurement and appropriation matters within a forum that is well known to Council, and accommodates transparency and accountability in the process (subject to the need to move to closed session as appropriate); and
- it does not require extra administrative resources on the basis that it is an existing Council committee, with the relevant processes and procedures already in place.

This option will involve the least time, effort and resources to establish.

**Structure Option 2 - Establish an Advisory Committee**

The Local Government legislative framework provides for Council to appoint "committees". The Local Government Regulation contemplates the appointment/establishment of:

- **Standing Committees** - Council currently only has standing committees. A standing committee may consist only of councillors and it is open to Council to delegate to a standing committee. On the basis that the New Committee’s role will be to make recommendations to the existing City Governance Committee only, this does not appear to be an appropriate structure for the New Committee;

- **Special Committees** - a special committee is generally convened for a particular single issue or short term purpose. On the basis that the new committee is proposed to have an ongoing role, this does not appear to be an appropriate structure for the New Committee.

- **Advisory Committees** - Council does not currently have any advisory committees. An advisory committee may include members who are not councillors (but it is open to Council to establish an advisory committee comprising councillors only). Unlike a standing committee, there is no scope for delegated decision-making by an advisory committee.

Committees (including advisory committees) appointed in accordance with the Local Government framework are subject to Council's Local Government and Committee Meeting Code and a range of regulatory provisions under the Local Government legislative framework, including the formal process requirements for meeting conduct.

For example, all committee meetings are to be conducted on an open and transparent basis. Therefore, the New Committee will need to be cautious about discussing confidential information of Council or of tenderers, without going into closed session. From a transparency perspective, the closure of the New Committee meetings on a regular basis to protect confidential information may draw questions about the role and activities of the New Committee.

In addition, the procedures and requirements for meeting notices, agendas and reports would apply to the New Committee. Therefore the establishment of a New Committee as an advisory committee will increase the administrative burden on Council.

This option will involve the most time, effort and resources to establish.
Structure Option 3 - Establish an Advisory Group

As an alternative to establishing a formal committee under the Local Government legislative framework, it is open to Councillors to meet on an informal basis to consider Council’s procurement and appropriation activities, and to make recommendations to the City Governance Committee in the same way that any councillor is entitled to do so.

On the basis that the term “Committee” has a specific meaning under the Local Government framework, it would not be appropriate to describe the group as a committee as this will cause confusion as to how the 'group' should operate. Rather, it would be preferable to describe the group as a "advisory group" or some other title that reflects the fact that the group and conduct of meetings by that group falls outside the formal structure of committee meetings under the Local Government framework.

This option reflects the proposed informality in respect of the conduct of meetings and the intent that the group should not be a decision-making group. Adopting this approach:

- allows for optional attendance by Councillors (noting that Councillors who are members of formally established committees must seek to attend all meetings);
- does not require the meeting to be open to the public (or audio recorded);
- means that the Local Government and Committee Meeting Code (including in respect of meeting conduct) will not apply to the informal meetings; and
- reduces the administrative burden for Council somewhat on the basis that it will not require the same formality that applies to formal committee meetings, including the preparation of formal agendas, minutes and reports.

Despite the informality, the legislative framework still provides some regulatory provisions that will impact on the way that matters are considered by the informal working group:

- Councillors will remain subject to obligations of confidence is respect of confidential information considered in the working group (for example, a tenderer’s commercial in confidence information);
- Councillors must not breach ss. 171 (use of information by councillors) and 171A (inside information) of the Local Government Act in respect of their use of information discussed on the working group;
- Councillors who have a personal interest in a matter must not influence, or attempt to influence, a local government employee or a contractor of the local government who is authorised to decide or otherwise deal with a matter in a particular way (s. 175I(3)). This would apply, for example, if a councillor attending at the working group sought to influence the way a procurement process is conducted; and
- all records created by the working group will be subject to RTI.

It is important to note that the Department of Local Government, Racing and Multicultural Affairs (DLGRMA) is currently considering future amendments to the legislative framework in relation to the regulation of informal meetings. The specific requirements are not yet finalised but DLGRMA’s January 2020 paper "Proposed local government regulatory reforms - informal meetings" sets out potential reforms, including the requirement for local governments to adopt a policy about informal meetings and the application of a more strict approach to conflicts of interest in informal meetings. Once finalised, the tighter regulation around informal meetings would apply to the meetings of an advisory group, as proposed in this Option 3.
Notwithstanding the informal nature of the advisory group, the group (and the conduct of its meetings) would still need to be subject to a terms of reference that clearly identifies the scope of its role, any quorum requirements and the process for the group’s decision making (i.e. decisions about matters to consider and the making of recommendations to the City Governance Committee). Most importantly, the Terms of Reference should be drafted to minimise the key risks identified above including that the group’s role does not extend to interfering with or influencing specific procurement processes.

This option will involve the second most time, effort and resources to establish.

**ANY PREVIOUS COUNCIL DECISIONS**

Nil

**FINANCIAL/RESOURCE IMPLICATIONS**

The establishment of the Procurement and Appropriations Advisory Group will have an administrative impost, particularly on the Administration (Corporate Procurement Program) and Corporate Governance branches.

**RISK MANAGEMENT IMPLICATIONS**

As outlined in the report.

**LEGAL/POLICY**

As outlined in the report.

**COMMUNITY AND OTHER CONSULTATION**

Nil

**CONCLUSION**

This report recommends the establishment of a Procurement and Appropriations Advisory Group to support procurement and appropriations across Council.

**ATTACHMENTS TABLE**

No attachments.