

**CITY OF MARION
GENERAL COUNCIL MEETING
24 FEBRUARY 2015**

CONFIDENTIAL REPORT

Originating Officer: John Valentine, Manager Strategic Projects
Corporate Manager: John Valentine, Manager Strategic Projects
Director: Heather Montgomerie
Subject: Cove Civic Centre – Cost and programme management
Reference No: GC240215F01

If the Council so determines, this matter may be considered in confidence under Section 90(3)(b)(i)(ii) of the *Local Government Act 1999* on the grounds that the report contains information relating to information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and would, on balance, be contrary to the public interest.



Mark Searle
Chief Executive Officer

RECOMMENDATION:

That pursuant to Section 90(2) and (3)(b)(i)(ii) of the *Local Government Act 1999*, the Council orders that all persons present, with the exception of the following persons: Mark Searle, Kathy Jarrett, Heather Montgomerie, John Valentine, Kate McKenzie, Craig Clarke, Jaimie Thwaites and Victoria Moritz, Campbell Mackie and Nathan Hawkes, be excluded from the meeting as the Council receives and considers information relating information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council and would, on balance, be contrary to the public interest.

REPORT OBJECTIVES:

To advise Council of cost and time issues associated with the construction of the Cove Civic Centre ("**CCC**") ("**the Project**") and to seek a Council resolution to proceed to negotiations, following which, a report will be brought to Council for consideration on the revised contract cost and project completion date. A negotiation process is aimed at:

1. securing the timely and cost effective completion of the Project ;
2. resolving all Project programming and financial issues so as to avoid any protracted dispute with the construction contractor Mossop Construction and Interiors ("**MC+I**").

EXECUTIVE SUMMARY:

Project construction activities commenced in October 2013. At the outset of the Project, the opening of the CCC was originally programmed for March 2015, after a December 2014 construction completion.

During the Project a number of events and circumstances (including the identification and correction of design errors/omissions, the insolvency of the sole supplier of a specified louvre product and inconsistent levels of administration and resourcing by MC+I) have impeded the progress of construction activities. Those events and circumstances have resulted in completion delays and attendant increases in the cost of completing the Project. The current forecast adjusted Project completion date is June 2015 and the adjusted opening date for operations concerning the CCC is July 2015.

Attached as Appendix 1 is a report from Thinc Projects (the appointed Project Manager and Superintendent for the Project) ("**the Report**") which details the problems encountered on the Project to date and the time and cost impact of those problems. Importantly, the Report demonstrates that the processes under the Project contract for determining where risk and responsibility rests for the completion delays in issue and the attendant increases in the cost of completing the Project will be complicated, based on subjective analysis to some degree, time consuming and expensive.

The Report also highlights that while the Project contract affords the Council rights and remedies against MC+I in respect of any unjustified delay in completing the Project, it is likely that the Council will become involved in a costly and protracted dispute with MC+I if a strict contractual line is adopted and enforced by the Council.

The two real options that are now available to the Council, as noted in Section 5 of the Report, are to either:

1. require Thinc Projects to make determinations about the respective entitlements of the Council and MC+I (which will be challenged by MC+I and lead to costly dispute); or
2. start a without prejudice dialogue with MC+I aimed at reaching a mutually agreed framework for completing the Project by an agreed completion date and for an agreed adjusted construction cost. Any such dialogue will need to be focussed on securing an agreement with MC+I that results in the following outcomes ("**the Required Outcomes**"):
 - 2.1 completion of the Project by a firm date;
 - 2.2 the creation of a new liquidated damages regime that will apply if MC+I does not complete the Project by the new completion date; and
 - 2.3 the settlement of all existing variation costs claims from MC+I, delay costs and liquidated damages entitlements with associated releases of liability from the Council to MC+I and from MC+I to the Council;

The benefit associated with adopting and implementing option 2 above and achieving the Required Outcomes is that the Council will achieve certainty about Project completion and the cost of doing so in the short term, without any risk of becoming involved in a protracted dispute with MC+I.

An approach has already been made to MC+I regarding a way forward on the outstanding delay and costs issues. MC+I has indicated that it would be prepared to participate in without prejudice and good faith discussions as per option 2.

Given this, and in keeping with the recommendations set out in Section 5 of the Report, there is a pressing need for Council to decide whether to endorse the start of negotiations with MC+I to secure the Required Outcomes.

RECOMMENDATIONS: (4)

DUE DATES

That Council:

- | | |
|---|--------------------|
| 1. Note that there are time and cost implications and risks arising out of the completion delays on the Project to date, which implications and risks must be managed and addressed. | February 2015 |
| 2. Authorise the Chief Executive Officer to commence without prejudice and good faith discussions with MC+I to formulate a settlement framework that is consistent with the Required Outcomes, such settlement framework (if and when formulated) to be brought to Council for consideration and endorsement. | March / April 2015 |
| 3. Authorise the Chief Executive Officer to make public comments in relation to the completion date for the project so as to advise the community, suppliers to the project and council staff that are preparing for the opening of the facility | February 2015 |
| 4. In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Council orders that this report, Cove Civic Centre – Cost and programme matters and the minutes arising from this report having been considered in confidence under Section 90(2) and (3)(b)(i)(ii) of the Act be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting. This confidentiality order will be reviewed at the General Council Meeting in December 2015 | December 2015 |

BACKGROUND

Council has been progressively facilitating the redevelopment of the Hallett Cove shopping precinct through the development of Patpa Drive, (completed by Council in December 2008), the redevelopment of the Hallett Cove Shopping Centre (completed by the Makris Group in 2009) and the construction of the CCC.

Council established a budget for the Cove Civic Centre of \$ [REDACTED] million (\$ [REDACTED] Council, \$ [REDACTED] Federal) and \$ [REDACTED] (Council) for related infrastructure works. Tenders were called and six responses received. The construction tender prices ranged from \$ [REDACTED] to \$ [REDACTED]. Whilst MC+I's tender was the lowest, a number of criteria are taken into

consideration when assessing tenders, with price being one of the criteria. As a result of the tender and post-tender discussions, MC+I was appointed as the Project construction contractor being assessed as the best overall tender received taking into consideration all tender criteria.

Council approved the design and construction of the CCC through an established prudential process in accordance with the Local Government Act.

When Council approved the Project it also resolved to fund the upgrade of Ragamuffin Drive and related stormwater improvements from the 2013/14 and 2014/15 Annual Capital Works Budget.

In summary the budget established for the Project comprises the following:

Project Element	Funding (millions)
Council contribution	\$ [REDACTED]
Federal Funding	\$ [REDACTED]
Sub - total	\$ [REDACTED]
Arts SA funding	\$ [REDACTED]
Ragamuffin Drive	\$ [REDACTED]
Stormwater up-grade	\$ [REDACTED]
Sub – total	\$ [REDACTED]
Other funds – interest on federal funding	\$ [REDACTED]
Total	\$ [REDACTED]

The various costs associated with the Project are shown in the table below.

Project Element	Cost (millions)
MC+I contract	\$ [REDACTED]
Works by City of Marion	\$ [REDACTED]
External site services	\$ [REDACTED]
Professional fees	\$ [REDACTED]
Contingency	\$ [REDACTED]
Sub – total	\$ [REDACTED]
Tender saving (1)	\$ [REDACTED]
Total	\$ [REDACTED]

- (1) The sum tendered by MC+I was \$ [REDACTED] million below the original Project cost estimate and the original budget set by Council in the amount of \$ [REDACTED] million.

It should be noted that the interest of \$ [REDACTED] from the federal funding is required to be spent on the Project under the terms of the funding agreement. The interest also explains why the above tables describe a higher funding amount than costs associated with the Project.

DISCUSSION

As described in the Report the CCC has experienced a range of difficulties that have resulted in delays and extension of time claims by MC+I. Thinc Projects' report contains

information regarding the delays and the remedies that can be adopted to place the project on a new time schedule and contract cost to ensure the delivery of the project.

A number of causes have combined to result in the delays, these include MC+I's inconsistent approach to contract administration, site coordination, programming issues and resourcing. One of the primary issues has been the inability of MC+I to translate the design into workshop drawings and constructible elements i.e. steelwork and windows.

The City of Marion's consultant design team's time to respond to requests for information has contributed to some of the delays. The CCC is a complex design, and the design drawings were dependent on the coordination of the workshop drawing process by MC+I. Support of the consultant design team is needed to achieve this. There have been instances where the design team's response has not been as timely as it could or should be. Inclement weather has also contributed to the overall completion delay in issue. In respect of adverse weather there has been 20 days of delays associated with either extreme heat or rain that has stopped construction.

MC+I has cited delays associated with the louvre windows that were specified for the project, steelwork for windows and window installation.

The contractual responsibility for delivering the louvre windows and other windows rests with MC+I despite the fact that the louvre product was specified and that only one supplier could supply and install the nominated product. This fact is relevant because the supplier became insolvent during the Project, thereby creating delays while an alternative supplier was considered, and then discounted due to cost, and then a final window treatment was approved and formulated. MC+I has argued that from a fairness perspective, they should not have to shoulder the full extent of the delay arising from the supplier's insolvency. Apart from the insolvency issue, MC+I spent many months during which they did not co-ordinate the design issues associated with the louvers, meaning that they are not blameless in terms of how and when the insolvency of the supplier impacted on the Project program.

The range for the cost of resolving the Project will become more certain as further information is forthcoming and there is clarity around whether outstanding time and cost issues can be resolved without recourse to dispute resolution processes. In December MC+I had still not provided a revised construction finish date which influences the calculation of costs. MC+I provided a revised construction finish date on 29 January 2015, of late June 2015. Through the tender process MC+I's tender price was \$[REDACTED] million below the tender estimate. The cost of finally delivering the Project should still be within the Council's approved budget of \$[REDACTED] million (\$[REDACTED] Council, \$[REDACTED] Federal funding), especially if a settlement framework can be formulated and agreed with MC+I.

ANALYSIS

Options to resolve claims and complete the project

As noted in the Report, there are essentially two options for achieving completion of the Project and determining the final cost of construction. One option is for the Council to require Thinc Projects to make determinations under the Project contract as to the specific entitlements of the Council and MC+I. As Thinc Projects highlight in the Report, any such determinations will result in the activation of dispute resolution processes which would place the resolution of such matters in the hands of the Court or an Arbitrator. If this happens, there will be no certainty around completion and the costs of any ensuing dispute will outstrip the amounts that are currently being forecast as actual construction cost increases. High level legal advice has been obtained about the time and cost associated with dispute

resolution processes. It is understood that a construction dispute usually takes some 2 years to resolve, would involve fees in the order of \$ [REDACTED] plus the costs of resolving the claims, and would require the diversion of the equivalent of two full time staff over the 2 year period to resource the disputation process.

The second available option is for the parties to negotiate and agree a settlement framework that would result in a new contract sum and construction completion date being agreed. MC+I has advised of their desire to engage in negotiations aimed at formulating such a settlement framework.

It is highly recommended that Council endorse the second option involving the negotiation and formulation of a settlement framework to enable the Project to be completed in the most timely possible manner and without significant legal and resource implications to both organisations.

Representatives of MC+I and staff have met to determine a draft process for resolving claims, establishing a new finish date and a new contract sum. The resolution of these matters will have a cost implication that will need to be considered by Council to enable the formulated settlement framework to be endorsed, documented and implemented.

Until the above negotiations occur the actual final cost of delivering the Project cannot be specifically determined. Thinc Projects and Rider Levett Bucknall (cost consultants) estimate the values in the range of \$ [REDACTED] to \$ [REDACTED] may end up being incurred in excess of the current allocated Project costs. It should be noted that this range is within the \$ [REDACTED] million tender saving and the budget of \$ [REDACTED] million and the interest earned on the federal funding of \$ [REDACTED] is also available to resolve the costs.

Financial Implications:

Council's contribution to the project of \$ [REDACTED] million has been accommodated in the Long Term Financial Plan (LTFP).

The estimated range to deliver the Project is, as noted above, between \$ [REDACTED] and \$ [REDACTED]. The final amount will not be known until negotiations are concluded with MC+I and then considered by Council or in the worst case, until there has been a dispute process and then a final and binding determination of Project entitlements. Whilst the range to conclude the Project, at its upper limit is \$ [REDACTED] this is still within the \$ [REDACTED] million tender saving that was achieved in the tender process. The resolution of the amount required to complete the project will still be within Council's \$ [REDACTED] million allocation, as included in the Long Term Financial Plan.

CONCLUSION:

The outstanding completion delays and attendant cost issues need to be negotiated and resolved to enable the Project to be completed expeditiously, with certainty and without the prospect of the Council becoming involved in a protracted and costly dispute with MC+I.

There will be a need to access the tender saving that was secured on the engagement of MC+I so as to complete the Project quickly and to close out current claim issues. The net cost of MC+I's claims and Council's claims will be known soon, if discussions commence and progress with MC+I.

Any settlement framework that is formulated with MC+I will be brought to Council as soon as practicable for consideration and endorsement.

ADVICE+ACTION

THINC





**City of Marion
Cove Civic Centre
Background Report**

Background Report No. Rev 2
12 February 2015

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COVE CIVIC CENTRE

Version	Date	Issued to	Issued By	Signature
1.0	9.02.15	DRAFT Version - City Of Marion for Review	Nathan Hawkes	
2.0	12.02.15	City of Marion Final Copy	Mark Utting	

Disclaimer

Thinc disclaims all liability for any errors or omissions contained in this report where information is provided by third parties. Thinc, its directors, employees, shareholders, agents and other representatives will not, under any circumstances, be liable for any loss or damage arising out of or related to the use, or inability to use, the information in this report.

1.0. Purpose of Report

This report has been prepared at the request of the City of Marion ("CoM"). CoM wishes to understand the origin and extent of the completion delays and cost increases that have so far arisen on the Cove Civic Centre Project ("the Project"). We understand that CoM also requires our views and recommendations, as the Project superintendent, about how best to manage the current delay and Project accounting issues and to secure the timely and cost effective completion of the Project.

We note that this report will be included as an appendix in the City of Marion General Council Meeting Report for the General Council Meeting scheduled to take place on 24 February 2015. This will ensure that those present at the scheduled meeting will have the benefit of the Project history and our recommendations when deciding how to address the current delay and Project accounting issues.

Necessarily, this report has been prepared and submitted solely for the above purpose and should not be used or relied on for any unrelated purpose. As the report contains information and recommendations that are confidential, the report and its contents must not be disclosed to persons other than those attending the scheduled meeting. A breach of confidentiality could significantly prejudice the commercial interests of CoM in respect of the Project.

2.0. Background Information

The project team was engaged by the CoM as a result of a competitive process. The key project team members are as follows:

- Thinc Projects – Project Manager/Superintendent
- Hassell – Architect
- Rider Levett Bucknall – Cost Manager
- WSP – Services Engineers
- GHD – Civil and Structural Engineers
- Main Contractor – Mossop Construction + Interiors (MC+I)

MC+I has been engaged to carry out and complete the Project under a traditional lump sum delivery model. The contractual framework for the Project is embodied in a modified version of AS2124 -1992 as published by Standards Australia (**“the Contract”**). Under the Contract, MC+I is a construct only contractor, meaning that it has no risk or responsibility for any errors, omissions or discrepancies in the design documents that have been prepared by Hassell, WSP or GHD

Thinc Projects acts as the Superintendent under the Contract and acts as the assessor, certifier and valuer of entitlements (including payments due to and from MC+I and extensions of time). In performing functions as assessor, certifier and valuer, Thinc Projects is required to act fairly, reasonably and impartially.

MC+I began construction activities on the Project in October 2013. The original completion date specified in the Contract was 15th December 2014. The Cove Civic Centre was planned to be open to the public during March 2015. Several issues have occurred since construction started, which have resulted in the progress of the work proceeding at a slower than programmed rate for completion by 15 December 2014. The causes of the delay are varied. More details about the delay causing events that have arisen on the Project are set out below.

The impact of the delays are likely to result in the original completion date being extended out to the end of June 2015, with the Cove Civic Centre being opened to the public by the end of July 2015. The programming impact of the delays experienced to date is still being worked through as at the date of this report. MC+I have submitted amended programs that reflect the Project reaching practical completion by the end of June 2015. We are reviewing the content of the MC+I programs to determine whether the logic and assumptions that underpin the proposed new completion date are reasonable and achievable.

The allocation of risk and responsibility for the delays that have arisen to date is a matter, as we note below, that is not straight forward and which could lead to a dispute. MC+I has recently submitted several claims for extension of time with attendant prolongation costs of \$[REDACTED]/working day, alleging that almost the entire extent of the delays faced to date are

due to events or circumstances that are beyond MC+I's risk and control. We do not agree with the position that MC+I has taken and believe that there must be an apportionment of responsibility for the delays as between CoM and MC+I. At this time, we have not made and published a determination as to MC+I's extension of time and cost entitlements on the submitted claims. We consider that if we do so, MC+I will trigger the dispute resolution processes under the Contract because MC+I will not accept our determination and will be motivated to avoid liquidated damages being levied against them.

Accordingly, the best position to take at this stage is to enter into Commercial Negotiations.

For the reasons given below, we consider that CoM and MC+I should only become involved in dispute resolution processes if commercial negotiation strategies (see section 5 recommendations) do not result in an agreed path forward.

3.0. Project Issues

Several delay causing events have arisen on the Project to date. Some of the delay causing events relate to circumstances which are, in keeping with the Contract, risks that MC+I assumed and for which MC+I cannot claim time and cost relief. We consider that some of the delay causing events also relate to matters or issues that entitle MC+I to claim an extension of time and prolongation costs in respect of the extended period of construction. The delay causing events are summarised in this section.

3.1. Performance of Main Contractor and Principal's Project Team

Main Contractor Performance

We do not consider that MC+I has been proactive and diligent in the management of Requests for Information in dealing with design errors or anomalies, coordination and programming of subcontractor work, management of Shop Drawings and maintaining requisite levels of labour resourcing on the Project to address and overcome the above. All of these shortcomings have caused or contributed to the completion delay in issue. MCI's inability to regularly table an updated construction programme with a clear and logical critical path has limited the Project Team's ability to understand potential delay and/or mitigate delays before they are realised. For a project of this size and complexity it would be reasonable to expect that the Head Contractor issues a comprehensive programme update on a monthly basis.

Supplier Insolvency

Delay causing circumstances and events have also transpired which cannot be fairly and reasonably attributed to MC+I. A major issue impacting on the rate of progress of work has been the insolvency of the supplier/subcontractor responsible for supplying and installing the louvres for the Project. The louvre product was specified in the design documents. The specifications in fact called for the use of glass louvres which were to be integrated within the window framing system. The contract documentation did not provide the full detail with regard to the design, as it is a proprietary system. The louvre system could only be sourced from the supplier/subcontractor that has gone into insolvency. In effect, MC+I had no option but to engage the louvre supplier/subcontractor. While at a legal level, MC+I assumed risk for the performance of the louvre supplier/subcontractor, MC+I have argued that it is unfair and unreasonable to impose full risk and responsibility on them for the insolvency of a supplier they were forced to engage. The issue of what CoM as a model contracting party should equitably rather than contractually expect MC+I to absorb by way of delay caused by the insolvency of a nominated supplier, is not easy to resolve.

Against MC+I's fairness argument, it should be noted that MC+I did not properly manage the design issues and problems that arose in respect of the louvres and which, independently of the supplier's insolvency, caused a part of the completion delay.

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In respect of the louvre issue, there are also complicated programming issues arising out of the effectiveness of mitigation actions and strategies that have been adopted to address or overcome the design and supply problems encountered. Importantly, the following steps were taken:

- An alternative louvre was sourced, however it was unacceptable.
- Alternative awning designs were developed.
- The project recommended that the louvres be deleted and replaced with a fixed glass design. CoM approved this recommendation recently.

Design Issues

In addition to the above, certain events have transpired that can only be regarded as beyond MC+I's risk and control. Part of the completion delay in issue can be attributed to the number of design anomalies that have become apparent and have resulted in clarification/redesign and additional work being performed by MC+I in some instances. This occurrence is not unusual on any complex construction project, however in this instance it has also resulted in some delay to programme.

As noted earlier, MC+I does not, as a construct only contractor, have any risk or responsibility for design errors and omissions.

Mitigation

The delay events noted above were the subject of mitigation strategies and actions which have alleviated or avoided the full programming impact of their occurrence. Those strategies and actions included:

- The Main Contractor's project manager was replaced and an additional two site administrator was provided.
- Several resolution meetings were held to resolve key issues.
- Team Workshop was held, where the culture and collaborative nature of the project was defined and agreed.
- Weekly site meetings are now being held.
- Principal's Consultant team is meeting when required to resolve specific issues.
- Team culture and performance is reviewed and discussed monthly.
- Site attendance by the Principal's consultant team has been increased.

3.2. Inclement Weather

Another key cause of delay has been weather conditions experienced to date.

Under the Contract, MC+I is entitled to claim an extension of time as and when inclement weather conditions prevent or impede the performance of the Project works.

We consider that as at the date of this report, delay caused by inclement weather conditions (being excessively wet or hot conditions) account for at least 20 days of the completion delay in issue.

As with the other delays experienced on the Project, steps have been taken to mitigate the full impact of adverse weather conditions as and when they have arisen. In particular, works have been re-sequenced to mitigate the inclement weather caused delay where reasonable and practicable to do so.

3.3. Concurrency and Apportionment

As should be evident from the above, it will be an extremely difficult and technical task to determine what portion of the completion delay should be attributed to each of MC+I and CoM. The task is made more difficult because we will be relying on information and materials that are incomplete (especially in the case of propositions put by MC+I) and not contemporaneous.

Such a task will also involve a subjective determination by the person performing the programming review and assessment about:

1. whether there was cross-over or concurrency between qualifying causes of delay that entitle MC+I to claim extensions of time as opposed to non-qualifying causes of delay;
2. the merit of MC+I's mitigation strategies when dealing with both qualifying and non-qualifying causes of delay. If there is any doubt about whether MC+I took or properly managed mitigation actions, the extent of any extensions of time will need to be reduced accordingly.

Our view is that the background to the completion delay as described above creates an environment where programming experts can reasonably differ in their opinions about how much of the completion delay should be fairly apportioned to MC+I and/or CoM. Necessarily, there is uncertainty about how extension of time, delay cost and liquidated damages entitlements might be ultimately determined if a dispute is triggered about any assessment we make on time based issues.

Becoming involved in a technical programming dispute is a scenario which we would caution CoM against. Such disputes involve significant cost, are inevitably protracted and will turn on which programming expert a Court, arbitrator or expert prefers.

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4.0. Cost Impact

The completion delay and issues that underpin it have also had a cost impact on the Project.

We have worked with the Project quantity surveyor to forecast how the various issues that have arisen to date, and which may eventuate as the Project moves to completion, will impact at a financial level. The forecasting indicates that the impact of historical and future matters will require the current contingency allocation to be topped up from the original \$1.1m tender saving which was achieved by the Project Team. A predicted contingency top up from the original tender saving in the range of \$[REDACTED] to \$[REDACTED] is the upshot of that forecasting. The range reflects the uncertainty that underlies the programming issues and how delay costs/liquidated damages may be allocated through determinations that we may have to ultimately make. The forecast does not reflect any deductions for liquidated damages at this time because we have not conducted the complicated programming apportionment process described at section 3.3 above. As noted in section 3.1 above, MC+I is not blameless in terms of the completion delay and accordingly, there is likely to be a portion of the completion delay that will be allocated to MC+I, thereby entitling CoM to recover liquidated damages. This will be determined through the recommended commercial negotiation strategy as outlined in Section 5.

Outlined below are the assumptions and values that we have had regard to in deriving the range of the likely contingency overrun. Please note that the assumptions and values set out below do not take into account the legal and other third party costs that may have to be expended if any determinations we make about time and costs entitlements under the Contract end up in dispute. As noted below, if a dispute arises, there will be significant external and internal costs that will result in the forecast contingency overrun becoming meaningless.

Cost Item	Predicted Likely Forecast Outcome	Potential Worst Case Outcome
Current Construction Contingency Overrun	\$[REDACTED]	\$[REDACTED]
Forecast variation negotiations outcomes currently being processed	(\$[REDACTED])	\$[REDACTED]
Extension of Time Claims outcome (payable by CoM to MC+I)	\$[REDACTED]	\$[REDACTED]
Additional Consultant fees to end of June 2015	\$[REDACTED]	\$[REDACTED]
Deduction for Liquidated damages (payable by MC+I to CoM)	\$TBA	\$TBA
Louvres change to fixed glazing (savings for scope change only)	(\$[REDACTED])	(\$[REDACTED])
Forecast future Variations until Project Completion	\$[REDACTED]	\$[REDACTED]
Client Supplied Items	\$[REDACTED]	\$[REDACTED]
Client Occupancy Changes	\$[REDACTED]	\$[REDACTED]
Total Forecast Contingency Top-Up Range	\$[REDACTED]	\$[REDACTED]

The uncertainty reflected in the above additional contingency requirements, and the potential for that forecast to blow out significantly if a dispute occurs, can be controlled and converted into a final position if the strategy that we recommend in Section 5 of this report is adopted and implemented successfully.

5.0. Recommendations

For the reasons outlined above, CoM is now at a point in the Project where there is uncertainty about the time and cost associated with completing the Project. That uncertainty is unlikely to be resolved if we, as the Project superintendent, make a determination under the Contract as to:

1. how the completion delay should be apportioned and what the adjusted date for completion should be;
2. the value of delay costs and liquidated damages resulting from the apportionment of the completion delay;
3. whether work that MC+I claims as variations are in fact additional scope of work and if so, the valuation of the same.

As noted above, the exercise of resolving the programming issues will involve a subjective assessment of matters like concurrency and how well MC+I responded to delays as and when they arose. Necessarily, MC+I (and potentially CoM) may not agree with the programming decisions that we make as the Project superintendent, leading to an inevitable dispute.

Our experience with construction disputes is that they involve significant legal costs, cause major disruption to the internal administration and functions of the parties to the dispute and are never resolved or settled quickly. Given this, we consider that CoM should avoid any strategies or action that may result in the dispute resolution processes having to be triggered under the Contract.

That is to say, we do not consider that CoM should instruct us to make determinations at this time which we believe will be challenged and lead to time and costs being incurred in the resolution of historical issues instead of applying such resources to closing out the Project on a commercial basis.

We believe that a better approach would be for CoM to start without prejudice discussions with MC+I aimed at developing and agreeing a commercial framework that involves agreeing a firm completion date as well as resolving all Contract entitlements (delay costs, liquidated damages and variation claims) on a "give and take" basis in recognition that it is better to do this than spend huge amounts in dispute. MC+I have previously been receptive to the idea of holding without prejudice discussions to address issues and concerns that have arisen on the Project (e.g. the performance of the previous Project manager) and we believe that MC+I will see the good sense in negotiating the type of framework we are suggesting.

The issues that will need to be discussed and negotiated with MC+I include:

1. the requirement for a new program that incorporates a realistic completion date. We have already started the process of evaluating and discussing the revised programs submitted by MC+I. We think it will be possible to agree a realistic completion date and associated program in the short term;
2. what level of compensation should be recovered by each of CoM and MC+I in respect of the delays that are reflected in the agreed revised program. This will really involve a commercial discussion about the complicated programming issues addressed above and will need to focus on the benefits of reaching an agreement rather than going to dispute. There will need to be an acceptance that whatever the costs end up being that each CoM and MC+I will release each other from claims and costs for the historical matters that are closed out;
3. a regime for new liquidated damages to apply if MC+I fail to complete the Project by the agreed adjusted completion date.

The above commercial framework once negotiated and agreed would need to be documented in the form of a Deed. The agreement or Deed should be drawn up by CoM's solicitor and we would recommend that CoM engage an experienced construction lawyer to perform that task.

We recommend that CoM act on our recommendation by commencing without prejudice discussions with MC+I as soon as practicable.