

Confidential - Question with Notice - Edwardstown Urban Renewal Project

Elected Member Councillor Bruce Hull

Report Reference: GC210427Q01

Confidential Report ☒

Reason for Confidentiality

That pursuant to Section 90(2) and (3)(d)(i) and (ii) of the Local Government Act 1999, the Council orders that all persons present, with the exception of the following persons: Chief Executive Officer, General Manager City Development, General Manager Corporate Services, General Manager City Services, Manager Corporate Governance, Manager City Activation, Project Director Urban Renewal, Manager Finance, Unit Manager Statutory Finance and Payroll, Unit Manager Communications and Unit Manager Governance and Council Support, be excluded from the meeting as the Council receives and considers information relating to Edwardstown Urban Renewal Project, upon the basis that the Council is satisfied that the requirement for the meeting to be conducted in a place open to the public has been outweighed by the need to keep consideration of the matter confidential given the information relates to confidential commercial information including preliminary concept plans and financial figures.

Question:

With regards to the Edwardstown Urban Renewal Project, from a corporate governance perspective has Council:-

1. Considered any potential conflict of interest relating to Council approving the zoning/DPA and Land Management Agreement for this land and the intent to purchase it?
2. Considered the Australian National Competition Policy expectations as to how it may relate to Question 1, given that Council is assuming the role of a property developer?

Supporting Information:

Nil.

Response Received From:

Project Director, Urban Renewal - Sascha Frost

Staff Comments:

The following legal advice has been provided to Council by Mellor Olsson Lawyers regarding these questions:

1. Is there any potential conflict of interest relating to Council approving the zoning/DPA and Land Management Agreement and the subsequent intent to purchase the land?

No, there is no conflict of interest arising in these circumstances.

Council entered into the LMA in 2018 on the basis that the current owner of the land (Perpetual Nominees Limited (PNL)) would be undertaking a significant redevelopment of the Land. At the time, it was understood by all parties to the LMA that the proposed development of the Land by PNL could only occur if the Land was rezoned. As such, Council agreed submit an application for a Development Plan Amendment (DPA) for consideration and approval by the Minister for Planning.

Prior to granting approval, the Minister required the parties enter into an Interim Road Infrastructure Design and Delivery Deed which would allow for a detailed road analysis and commit PNL to upgrades to road infrastructure. The LMA was a requirement under the Deed.

The Council entered into the LMA on the basis PNL was moving forward with its proposed redevelopment of the Land and Council was supporting that redevelopment. As such, Council successfully applied to the Minister for Planning to have the Land rezoned, as per the LMA.

The Interim Road Infrastructure Design and Delivery Deed (annexed to the LMA) refers to a staged approach to the redevelopment proposed by PNL. We do not have instructions as to what stage PNL's proposed redevelopment is currently at.

However, what is clear is that PNL is now considering the sale of the Land to Council. At the time of entering into the LMA, this was not a foreseeable option as PNL had not expressed any interest in selling the land at all. All the actions of the Council were geared toward facilitating the redevelopment as per PNL's plan. Over time, the possibility of the Council purchasing the Land for future development and urban renewal in order to influence the built form of Edwardstown has become a realistic proposition.

We have set out the above to make it clear that given the history of this matter and the content of the LMA (and associated documents), it is not reasonably possible to draw the conclusion that Council could have manipulated this scenario in any way for its own benefit, or acted in any manner as to create a conflict of interest between its past and future actions.

For the sake of completeness, we note that it is commonplace that Councils purchase land for a variety of uses, including land banking for future use. These transactions are often conducted through private negotiation, or even the compulsory acquisition process in certain circumstances. There is often a requirement for rezoning or other administrative process due to the intent of the land once purchased and it does not create any conflict of interest for the Council.

2. Could any issues arise under the Australian National Competition Policy with respect to Question 1 above and Council purchasing the Land and then acting as property developer?

No.

Whilst it is important to note that councils always need to fulfil any National Competition Policy (NCP) obligations when undertaking a Significant Business Activity, we do not consider such issues arise in this instance.

Where a Council is engaged in a Significant Business Activity for the purposes of the NCP it must apply Competitive Neutrality principles to that activity, which is about creating a level playing field between publicly owned and privately owned businesses competing in the same market. Consequently, competitive neutrality requires that the Council has no net advantage (or disadvantage) in comparison to a similar private sector business when conducting certain activities. This is not applicable to this situation.

We agree with the statement contained in the Prudential report that a one-off purchase of the Land of this nature does not constitute a Significant Business Activity as defined by National Competition Principles.

Furthermore, we also agree with your view that in this instance, the Council is not assuming the role of a property developer, as it is generally understood. In the context of the NCP principles, the Council is not acting as a property developer in the same manner a private developer would for future use of the Land.

It is important to understand, however, that NCP issues may arise moving forward, as each step in this process is undertaken. The NCP principles are an ongoing concern in any project and we can advise on any issues as they arise.