

21 December 2016

Our Ref:
File No:

Ms Lynn Race,
Council Officer Assistant , Upper House Committees

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Dear Lynn

In regards to your email, please find below the City of Sydney's responses to the questions on notice resulting from our appearance before the General Purpose Standing Committee No. 3 on Friday 25 November 2016 for the inquiry into enrolment capacity in inner city public primary schools.

Question 1: Reverend the Hon. Fred Nile - What did the site [Fig and Wattle Depot] cost the council originally?

The Council has held the site on Fig and Wattle Streets for 105 years. The site was originally a quarry, some of it leased from 1902, then Council resumed the whole site from 1911. The Land and Property Information Division have advised that Bk 965 No 414 was resumed and Bk 1789 No 77 was conveyed for 10 Shillings.

As noted at the hearing and in the City's submission, both parties – the City of Sydney and the Department of Education and Communities - agreed on the current day valuation of the site at \$100 million, based on independent valuation advice.

The NSW Treasury requires State Government Authorities to acquire land in Government ownership on the basis of "*current market value of the land and any improvement as agreed between the authorities concerned*" (Treasury Direction 469).

The Independent Commission against Corruption (ICAC) publication 'Direct Negotiations – a guidelines for managing risk' (May 2006) also identifies that the first principles to apply to the transfer process include obtaining best value for money and use of expert market valuations.

It should also be noted that the option for the State Government to compulsorily acquire the fig and Wattle site for a school was available under the *Land Acquisitions (Just Terms Compensation) Act*. However, this would have resulted in a higher cost than the City's sale offer.

Question 2: The Hon Courtney Houssos - You recently opened three childcare centres. You spoke of the contamination issues that apply across the city. I am happy for you to take this on notice: ***What kind of remediation work was done in order to satisfy yourselves as the approval body that appropriate remediation had been done at those locations? [Mr David Shoebridge - In relation to the Alexandria site] – What did you do on the site? Clearly there is a safe financially viable way for childcare centres and children who are smaller than primary school age to operate on these sites. Is it a similar capping system or a removal system? Is there a system that is currently used in the city to remediate sites to an appropriate level for children?***

The City as recently opened childcare centres at Alexandria (Huntley St); Darlinghurst (Bourke St); and Annandale (The Crescent). The remediation work done on these sites were done in accordance with the Environment Protection Authority (EPA) and the State Environmental Planning Policy 55 requirements and more specifically the processes and procedures required by the Contaminated Land Management Act.

Alexandria childcare centre

Based on site investigations a Remediation Action Plan was prepared which led to a Cap and Contain treatment of the site being specified. After completion a site auditor signed off the work meeting all requirements.

East Sydney (Darlinghurst) childcare centre

The centre consists of two separate parcels of land. Site investigations were conducted on both parcels and a combined Remediation Action Plan prepared. For the parcel containing the building spaces only minor contamination was identified. Any contaminated material was removed. For the outdoor play areas a Cap & Contain treatment was adopted.

On completion of the works a site audit confirmed the treatment had been completed satisfactorily.

The Crescent (Annandale) childcare centre

Following site investigations a Remediation Action Plan was prepared. As a result a Cap & Contain treatment was adopted. On completion of the work a site audit confirmed this had been completed satisfactorily

The system or process in place at the city to remediate sites is as noted by Mr Kim Woodbury (Chief Operating Officer) at the hearing and all have to go through the same process by law. *“The process is that we commission environmental consultants to put together a remediation action plan [RAP] for the site for the proposed use. That goes to an independent environmental auditor who basically agrees with the process. That is checked again at development application stage. It has to have an auditor signing off that it can be used for that purpose. It goes through that process regardless of the use, but the use determines the level of contamination and what type of contamination”.*

Question 3: The Hon Sarah Mitchell [in relation to the access for subsurface testing]

Can you table any information you can about that for the Committee's benefit?

[Mr David Shoebridge] Why did you have this delay and why get vacant possession before you would allow the subsurface testing? [The Hon Sarah Mitchell]

In this example, was there consultation with the tenant about access for subsurface drilling? I know you said in the written submission that you had concerns it might interfere with the current occupants, but did that conversation ever take place?

Key dates: Access and invasive works

3 March 2015: The Department of Education requested access to the site for non-invasive (surveys and studies) and invasive (bore holes) works. **18 March 2015:** City of Sydney issues a draft license agreement for access and early works.

31 March 2015: The Department of Education provides the proposed on-site investigations program and indicative bore hole locations. City of Sydney raised concerns with Mike Millar McLachlan Lister (Project Manager for Department of Education) about the impacts of the proposed invasive works on the July settlement due date. **1 April 2015:** The City of Sydney issued the final draft license agreement.

10 April 2015: The Department of Education's solicitors return draft licence document.

15 April 2015: The City of Sydney again raised concerns with (Director, Property & Facilities Management, and Department of Education) about the impacts of the proposed invasive works on the July settlement due date.

24 April 2015: The City of Sydney and Department of Education's legal representatives met in which it was agreed that an exchange and settlement would be in mid-late June following vacant possession. *It was also acknowledged by both parties that early access for invasive works would risk vacant possession and settlement.*

27 April 2015: The Department of Education's solicitors issue the City of Sydney with a revised draft license agreement. **5 May 2014:** The City of Sydney responds to the Department's solicitors on the revisions.

14 May 2015: The CEO emailed requesting feedback on the sale documents. Specifically, confirming when the City of Sydney would be receiving a response to the revised access license issued to the Department of Education; questioning why negotiations had stalled at the point where the license terms for the non-invasive works should be agreed, particularly given that access for non-invasive works were urgently needed; and in the interest of finalising the license as soon as possible, the CEO offered to discuss any outstanding matters by phone.

As of this date, no further emails were received from the Department of Education or their solicitors on this matter.

Question 4: Mr David Shoebridge [in relation to negotiate a broader commercial agreement] ***What about articulating in some detail potential commercial options – subdivision? Could you, on notice, provide some of the granular detail and respond?***

A number of commercial options were discussed with the Department of Education at a number of meetings in 2014 to help facilitate the use of the site for a school. These included:

1. 80 place childcare on site – \$8 million to be deducted from the purchase price;
2. Public use of school facilities including halls and recreational facilities – value of public use component to be deducted from the purchase price;
3. Construct a vertical school with reduced area and only buy a part of the site – this would reduce the purchase price;
4. Construct a vertical school with reduced area and sell the part of the site not required – this would reduce the net (or effective) purchase price; and
5. Any other public facilities could be included on the site that the City could make available for public use as well as used by the school - value of public use component to be deducted from the purchase price.

On **6 August 2014**, a letter from Ms Monica Barone, CEO City of Sydney to Ms Michele Bruniges, Secretary Department of Education and Communities clearly outlined alternative options for consideration in relation to the Fig and Wattle site to “progress resolution of this matter”.

Question 5: The Hon. John Graham - Given what has happened and given we have been to see the site—it is a remarkable site, the Fig and Wattle; it is so close to an area that is going to be very important for Sydney—it would be a real shame to not see the sort of creative solution that has been outlined by the City, harnessed in some way by the City and the State working together. It looks like this opportunity has passed us by, given the attitude of the agency on this particular question. ***What are the lessons that can be learned from that lack of coordination in this instance?***

Question 5a: Mr David Shoebridge - On notice, would you have a think about what are the lessons? ***Who else needs to be at the table? Should there be a memorandum between the City of Sydney and the New South Wales Government?***

Letters were exchanged between the Minister and the Lord Mayor for the sale of the Fig and Wattle land at an agreed figure, which was not subject to any due diligence process. A memorandum between the City of Sydney and the New South Wales Government would similarly be of a non-binding nature.

Only a binding contract would have ensured the sale and construction of the school on that site. The City had issued a binding Contract of Sale to the Department of Education and Communities in 2015.

The NSW Government and Department of Education need to be proactive in catering for the projected primary and secondary educational requirements for all areas of NSW. Options to secure land to meet the high demand areas need to be developed and well before precincts are redeveloped, land zonings changed and the new population arrives.

Funding needs to be committed by NSW Treasury up front, not after exchanges of letters and public announcements.

General Comment:

The City of Sydney welcomes a greater collaborative approach to the future planning and delivery of schools within the inner city. The City of Sydney is keen to partner with the State Government in delivering schools and educational facilities for our growing community, but not to take over the role and responsibilities of the Minister for Education and the Department of Education and Communities.

If you have any further questions about the above response, please contact

Yours Sincerely

Kim Woodbury
Acting Chief Executive Officer