

SUPPLEMENTARY AGENDA 1

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INNER WEST COUNCIL

COUNCIL MEETING

TUESDAY 26 JULY 2016

6:30pm

Location: Ashfield Service Centre, 260 Liverpool Road, Ashfield

**MEETING AGENDA – PRECIS
SUPPLEMENTARY ITEMS**

The following report appears as a late item with the Administrator's approval as information required for the preparation of the report was not available at the time of distribution of the Business Paper.

1 Administrator's Minutes

**C0716 Item 17 ADMINISTRATOR'S MINUTE: WESTCONNEX LEGAL ADVICE -
INITIAL ADVICE**

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Item No: C0716 Item 17
Subject: ADMINISTRATOR'S MINUTE: WESTCONNEX LEGAL ADVICE - INITIAL ADVICE
File Ref: 16/4718/85115.16
From Richard Pearson, Administrator

MOTION:**THAT:**

1. **Mr Robertson's first memorandum of advice be further considered by Council but it is noted that the prospect of successful challenge on the basis of the advice received is low; and**
 2. **the Department of Planning and Environment Compliance Officer be requested to further consider and advise Council whether the conditions of approval relating to heritage salvage are being properly implemented.**
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Background

In my Administrator's Minute to the Council meeting of 5 July, Council endorsed a proposal to engage Mr Tim Robertson SC to advise on prospects of legal challenge to the WestConnex project across the new LGA and that advice will be sought at utmost urgency, including an injunction on the current demolition works.

Initial Legal Advice

Mr Robertson has recently provided his first memorandum of advice which relates to whether the Roads and Maritime Service, Sydney Motorway Corporation and the road constructors are properly implementing the conditions of approval relating to the salvage of heritage material from demolition works being undertaken in Haberfield, and whether the manner of heritage salvage being undertaken provides the basis for an injunction of the current works.

While the implications of Mr Robertson's advice are being further considered, the advice does not provide strong prospects of a successful challenge or injunction on the basis of the manner in which heritage salvage is being undertaken in Haberfield.

In essence, Mr Robertson's advice is as follows:

1. The project approval requires an independent heritage consultant to assess whether materials should be salvaged from individual heritage items listed under the *Ashfield Local Environmental Plan*, as well as from contributory items within the Haberfield Heritage Conservation Area.
2. Whilst RMS may have formed the view (whether by itself or via its agents/consultants) that the approval only required salvage to be undertaken from listed heritage items and did not require contributory items within the Haberfield Conservation Area to be assessed for salvage, the appointed independent heritage consultant did nonetheless assess contributory items as outlined in the Heritage Salvage Report that formed part of the Construction Heritage Management Plan submitted as part of the Project.
3. There may be an argument that the heritage consultant's opinions on salvage may have been biased given the belief that only listed heritage items needed to be salvaged. However, this point is unlikely to sustain a legal challenge.

As a consequence, it appears that the requirements of the project approval insofar as documenting which heritage material to salvage have been met and, accordingly, it is not considered worthwhile for Council to commence legal action.

However, it is recommended that the Department of Planning and Environment's Compliance Officer be requested to undertake a review of implementation of the relevant heritage salvage conditions in the approval to ensure that salvage is being properly undertaken.

Further Advice

Mr Robertson is currently providing further advice regarding any potential challenges to the validity of the approvals for Stages 1 and 2 and this will be further considered and reported when received.

ATTACHMENTS

Nil.