

Extraordinary Council

Meeting No 2

Monday 4 March 2024

Notice No 2/1660

Notice Date 29 February 2024

minutes

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Present

The Right Hon The Lord Mayor - Councillor Clover Moore AO (Chair)

Members Deputy Lord Mayor - Councillor Robert Kok, Councillor HY William Chan, Councillor (Waskam) Emelda Davis, Councillor Sylvie Ellsmore, Councillor Lyndon Gannon, Councillor Shauna Jarrett, Councillor Linda Scott, Councillor Yvonne Weldon AM and Councillor Adam Worling.

At the commencement of business at 12.03pm, those present were:-

The Lord Mayor, Councillors Kok, Chan, Davis, Ellsmore, Gannon, Jarrett, Scott, Weldon and Worling.

The Chief Executive Officer, Chief Operating Officer, Manager Financial Planning and Reporting, Director City Planning, Development and Transport, Director Legal and Governance, Director City Life, Director Strategic Development and Engagement, Director People Performance and Technology and Director City Services were also present.

Acknowledgement of Country and Opening Prayer

The Lord Mayor opened the meeting with an Acknowledgement of Country and opening prayer.

Webcasting Statement

The Chair (the Lord Mayor), advised that in accordance with the City of Sydney Code of Meeting Practice, Council meetings are audio visually recorded and webcast live on the City of Sydney website. The Chair (the Lord Mayor) asked that courtesy and respect be observed throughout the meeting and advised those in attendance to refrain from making defamatory statements.

Item 1 Statement of Ethical Obligations and Disclosures of Interest

Statement of Ethical Obligations

In accordance with section 233A of the Local Government Act 1993, the Lord Mayor and Councillors are bound by the Oath or Affirmation of Office made at the start of the Council term to undertake their civic duties in the best interests of the people of the City of Sydney and the City of Sydney Council and to faithfully and impartially carry out the functions, powers, authorities and discretions vested in them under the Local Government Act 1993 or any other Act, to the best of their ability and judgement.

Disclosures of Interest

No Councillors disclosed any pecuniary or non-pecuniary interests in any matter on the agenda for this meeting of Council.

Item 2 Minutes by the Lord Mayor

Item 2.1 Action on Asbestos

Minute by the Lord Mayor

To Council:

Having safe parks and playgrounds is a vital part of the work we do at the City of Sydney.

When asbestos was found in mulch in the park above the Rozelle interchange on 10 January 2024, City staff sought and were given assurance that we did not use the same supplier.

Under our contracts, all delivery of services and materials must comply with Australian Standards and Resource Recovery Orders, and suppliers must ensure materials are free from foreign materials.

The City has about 350 parks and 5,750 garden beds. Given the assurances we had received, there was no indication that the City needed to test any individual park or garden beds.

Following a month-long deep supply chain investigation, the NSW Environmental Protection Authority (EPA) discovered that there might be contaminated mulch in the supply chain and recommended that the City test five of our parks for asbestos traces.

Swift action

Our tests revealed that asbestos samples were found in three of the five locations: bonded asbestos was found at Victoria and Belmore Parks, and friable asbestos at Harmony Park.

According to NSW Health, friable asbestos can be crumbled to a powder easily while non-friable, or bonded asbestos is material containing asbestos fibres reinforced with bonding materials (like cement sheeting or roofing).

Following guidelines set by SafeWork NSW, staff immediately began to source fencing and signs to stop people from entering affected parks. It took us less than 12 hours overnight, to source and erect fences.

There has been a suggestion that we should have begun testing all 350 parks and 5,750 garden beds in the City of Sydney after contaminated mulch was found in Rozelle Parklands. There was no evidence to indicate that we should, and even now that would be difficult to do given there are limited numbers of people qualified to do the testing and many schools and hospitals, and higher risk sites are currently being tested.

We continue to take advice from the EPA as it carries out its extensive supply chain investigation to track where potentially contaminated mulch has been deposited and prioritises those sites for remediation.

Remediation of contaminated areas is being undertaken in accordance with Work, Health and Safety Regulations and the SafeWork NSW How to Safely Remove Asbestos Code of Practice.

The City will continue to update Council and the community with information via our website and other communication channels.

Facts not fear-mongering

I want to assure the community that staff are working swiftly and effectively to address this incredibly serious situation and we note that there are now multiple sites across NSW that have been found to be contaminated.

I have faith in the ability of our staff to keep our community safe. I won't abide misleading criticism to the contrary. It has been deeply disappointing to witness the politicisation of such an important and serious issue for the City and the community.

Supplying mulch contaminated with asbestos is a serious offence, and the increase in discovery of the product – in NSW schools, hospital sites and public parks – is of serious concern.

Supply chain investigations are complicated, and I welcome the establishment of an Asbestos Taskforce by the NSW Government.

I note that the former NSW Government commissioned the Office of the NSW Chief Scientist and Engineer (OCSE) to carry out a review into the management of asbestos which the current NSW Government has not released or provided any update on.

Recommendation

It is resolved that:

(A) Council note:

- (i) that the City of Sydney acted swiftly and responsibly when the NSW Environment Protection Authority first advised that there may have been contamination further down the mulch supply chain and recommended we test five parks in our area for asbestos contaminants;
- (ii) that the remediation of contaminated areas is being undertaken in accordance with Work, Health and Safety Regulations and the SafeWork NSW How to Safely Remove Asbestos Code of Practice and under the ongoing advice of the NSW Environment Protection Authority; and
- (iii) that the NSW Government has established an Asbestos Taskforce to give more resources and support to the NSW Environment Protection Authority's investigation into asbestos contaminated mulch involving multiple sites across NSW;

(B) Council further note that the Chief Executive Officer continues to regularly update Council and the community about the extent and impact of contaminated mulch in our area through the City of Sydney website and other communication channels;

- (C) the Lord Mayor be requested to write to the NSW Premier, Minister for Health, Minister for Environment, and the Minister for Work Health and Safety with a copy of the subject Minute, and:
- (i) express Council's serious concern about the contamination of mulch supply chains and how this happened and urging the NSW Government to release information on the progress of the Office of the NSW Chief Scientist and Engineer's asbestos management review, which was commissioned in December 2022;
 - (ii) request information from the NSW Government's Asbestos Taskforce including:
 - (a) the current regulations covering the processing and quality control of mulch product and whether the prohibitive cost of asbestos disposal was a factor in mulch being contaminated;
 - (b) the current penalties for breach of relevant regulations;
 - (c) the Terms of Reference for the Asbestos Taskforce and whether it will make recommendations on any changes required to avoid a repeat of this regulatory failure; and
 - (d) details of progress with their investigations to date; and
 - (iii) urge the NSW Government to introduce stricter rules and penalties to prevent mulch supply chains being contaminated with asbestos in the future.

COUNCILLOR CLOVER MOORE AO

Lord Mayor

Moved by the Chair (the Lord Mayor), seconded by Councillor Kok –

That the Minute by the Lord Mayor be endorsed and adopted.

Procedural motion

At 12.08pm, it was moved by the Chair (the Lord Mayor), seconded by Councillor Kok –

That, pursuant to section 373 of the Local Government Act 1993, Council form itself into a Committee of the Whole for the purpose of enabling speakers present to address Councillors on the matter before them and answer questions.

Carried unanimously.

Procedural Motion

At 12.52pm, following discussion with speakers, it was moved by the Chair (the Lord Mayor), seconded by Councillor Kok –

That the Committee of the Whole be concluded and the Council meeting be reconvened.

Carried unanimously.

Amendment. Moved by Councillor Scott, seconded by Councillor Weldon –

It is resolved that:

(A) Council note:

- (i) asbestos in all forms is a carcinogenic mineral, resistant to heat, electricity and corrosion, extremely dangerous to humans when exposed to;
- (ii) on 13 January 2024, a community request from Ms Natasha Moulton was passed onto the Chief Executive Officer, requesting confirmation that Greenlife was not part of the City's supply chain, along with a request to test all City parks;
- (iii) on 15 January 2024, in response, the Chief Executive Officer provided advice to Councillors that Greenlife was not part of the City's supply chain, and that the request to test City parks was rejected;
- (iv) on 12 February 2024, Councillors were advised via email that, following an Environment Protection Authority (EPA) notification to the City of Sydney, that mulch has tested positive for both bonded and friable asbestos contamination;
- (v) first media reports about the asbestos concerns were at Monday 12 February 2024 at 10:06pm Australian Eastern Daylight Time, nearly 12 hours prior to fences or physical barriers to protect the City community going up; and
- (vi) the following sites across the City of Sydney have been confirmed to have asbestos contamination, with confirmation on the following dates:
 - (a) Rozelle Parklands - 10 January 2024;
 - (b) Belmore Park, Haymarket - 12 February 2024;
 - (c) Victoria Park, Camperdown - 12 February 2024;
 - (d) Harmony Park, Surry Hills - 12 February 2024 (friable asbestos);
 - (e) Munn Reserve, Millers Point - 17 February 2024;
 - (f) North Rosebery Park - 20 February 2024;
 - (g) Bicentennial Park between Glebe Point Road and Johnstons Creek - 20 February 2024 (friable asbestos);
 - (h) Bicentennial Park between Chapman Road and Johnstons Creek - 22 February 2024;
 - (i) Jubilee Park - 22 February 2024;
 - (j) Wentworth Park - 22 February 2024;
 - (k) Harold Park - 22 February 2024;
 - (l) Wood Street Lands - 22 February 2024 (friable asbestos);
 - (m) Observatory Hill Park - 22 February 2024;
 - (n) Robyn Kemmis Reserve - 23 February 2024; and

- (o) Giba Park - 26 February 2024;
- (B) Council formally refers this matter to the City of Sydney Audit, Risk and Compliance Committee, and requests the Chair to commission an independent investigation into the asbestos outbreak, with terms of reference to be determined by the City's Audit, Risk and Compliance Committee, which reports back to the Audit, Risk and Compliance Committee and Council; and
- (C) the Chief Executive Officer be requested to:
- (i) undertake testing for all City of Sydney early education and care centres, parks, playgrounds, garden beds and areas with mulch, and ensure results are publicly available on the City's website;
 - (ii) provide legal advice to Councillors on the legal and other liability risks to the Lord Mayor and Councillors;
 - (iii) provide advice to Councillors on the estimated resourcing implications, regulatory requirements, and steps undertaken to meet these requirements, by 8 March 2024;
 - (iv) provide a weekly briefing to Councillors on progress and precautions undertaken, and a daily update if and when changes are made to the City's asbestos register; and
 - (v) bring to Council a revised Budget with appropriate provisions for any future liability and other relevant expenses by May 2024.

The amendment was lost on the following show of hands –

Ayes (3) Councillors Jarrett, Scott and Weldon

Noes (7) The Chair (the Lord Mayor), Councillors Chan, Davis, Ellsmore, Kok, Gannon and Worling.

The substantive Minute was carried on the following show of hands –

Ayes (7) The Chair (the Lord Mayor), Councillors Chan, Davis, Ellsmore, Kok, Gannon and Worling

Noes (3) Councillors Jarrett, Scott and Weldon*.

*Note – Councillor Weldon abstained from voting on this matter. Pursuant to the provisions of clause 10.4 of the Code of Meeting Practice, Councillor Weldon is taken to have voted against the Minute.

Minute carried.

S051491

Speakers

Caroln Walsh (Chair of the Asbestos Taskforce and City of Sydney Audit, Risk and Compliance Committee), Adam Gilligan (Incident Manager, NSW Environmental Protection Authority), Dr Jeremy McAnulty (Executive Director, Health Protection NSW, NSW Health) and Martin Dwyer (Public Works Advisory) addressed Council on Item 2.1.

Item 3 The City's Response to Contaminated Mulch

Moved by the Chair (the Lord Mayor), seconded by Councillor Kok -

It is resolved that Council note the information contained in the subject report.

Carried unanimously.

X103307.002

Item 4 Notices of Motion

Item 4.1 City of Sydney Asbestos Crisis

Moved by Councillor Scott, seconded by Councillor Jarrett -

It is resolved that:

(A) Council note:

- (i) asbestos in all forms is a carcinogenic mineral, resistant to heat, electricity and corrosion, extremely dangerous to humans when exposed to;
- (ii) on 13 January 2024, a community request from Ms Natasha Moulton was passed onto the Chief Executive Officer, requesting confirmation that Greenlife was not part of the City's supply chain, along with a request to test all City parks;
- (iii) on 15 January 2024, in response, the Chief Executive Officer provided advice to Councillors that Greenlife was not part of the City's supply chain, and that the request to test City parks was rejected;
- (iv) on 12 February 2024, Councillors were advised via email that, following an Environment Protection Authority (EPA) notification to the City of Sydney, that mulch has tested positive for both bonded and friable asbestos contamination;
- (v) first media reports about the asbestos concerns were at Monday 12 February 2024 at 10:06pm Australian Eastern Daylight Time, nearly 12 hours prior to fences or physical barriers to protect the City community going up; and
- (vi) the following sites across the City of Sydney have been confirmed to have asbestos contamination, with confirmation on the following dates:
 - (a) Rozelle Parklands - 10 January 2024;
 - (b) Belmore Park, Haymarket - 12 February 2024;
 - (c) Victoria Park, Camperdown - 12 February 2024;
 - (d) Harmony Park, Surry Hills - 12 February 2024 (friable asbestos);
 - (e) Munn Reserve, Millers Point - 17 February 2024;
 - (f) North Rosebery Park - 20 February 2024;
 - (g) Bicentennial Park between Glebe Point Road and Johnstons Creek - 20 February 2024 (friable asbestos);
 - (h) Bicentennial Park between Chapman Road and Johnstons Creek - 22 February 2024;
 - (i) Jubilee Park - 22 February 2024;
 - (j) Wentworth Park - 22 February 2024;

- (k) Harold Park - 22 February 2024;
 - (l) Wood Street Lands - 22 February 2024 (friable asbestos);
 - (m) Observatory Hill Park - 22 February 2024;
 - (n) Robyn Kemmis Reserve - 23 February 2024; and
 - (o) Giba Park - 26 February 2024;
- (B) Council formally refers this matter to the City of Sydney Audit, Risk and Compliance Committee, and requests the Chair to commission an independent investigation into the asbestos outbreak, with terms of reference to be determined by the City's Audit, Risk and Compliance Committee, which reports back to the Audit, Risk and Compliance Committee and Council; and
- (C) the Chief Executive Officer be requested to:
- (i) undertake testing for all City of Sydney early education and care centres, parks, playgrounds, garden beds and areas with mulch, and ensure results are publicly available on the City's website;
 - (ii) provide legal advice to Councillors on the legal and other liability risks to the Lord Mayor and Councillors;
 - (iii) provide advice to Councillors on the estimated resourcing implications, regulatory requirements, and steps undertaken to meet these requirements, by 8 March 2024;
 - (iv) provide a weekly briefing to Councillors on progress and precautions undertaken, and a daily update if and when changes are made to the City's asbestos register; and
 - (v) bring to Council a revised Budget with appropriate provisions for any future liability and other relevant expenses by May 2024.

The motion was lost on the following show of hands -

Ayes (3) Councillors Jarrett, Scott and Weldon

Noes (7) The Chair (the Lord Mayor), Councillors Chan, Davis, Ellsmore, Gannon, Kok and Worling.

Motion lost.

X086655

Item 4.2 Asbestos in City of Sydney Parks

Moved by Councillor Jarrett , seconded by Councillor Gannon –

It is resolved that:

(A) Council note:

- (i) on 10 January 2024, mulch in the Rozelle Parklands was discovered to have been contaminated with asbestos;
- (ii) on 13 January 2024, a request was submitted to the Chief Executive Officer by Ms Natasha Moulton, asking the City to test all City parks for potential asbestos contamination;
- (iii) on 15 January 2024, the Chief Executive Officer provided advice that the request to test all City parks was rejected;
- (iv) on 19 January 2024, Councillors at the City of Sydney received an email from the Chief Executive Officer which stated “at the CoS mulch is generally replaced on a six-monthly to annual basis, the oldest mulch in the CoS was installed within a 24-month period. During this period the City has not sourced mulch for parks and open spaces from Greenlife Resource Recovery (the supplier named in the Rozelle Parklands issue);
- (v) on 12 February 2024, almost one month after this initial email was sent out by the Chief Executive Officer, Councillors received another email from the Chief Executive Officer confirming that after receiving notification by the NSW Environmental Protection Authority (EPA) on 8 February 2024, three City parks had returned positive results for asbestos contamination;
- (vi) the following sites across the City of Sydney have further been confirmed to have asbestos contamination, with confirmation on the following dates:
 - (a) Rozelle Parklands - 10 January 2024 ;
 - (b) Belmore Park, Haymarket - 12 February 2024;
 - (c) Victoria Park, Camperdown - 12 February 2024;
 - (d) Harmony Park, Surry Hills - 12 February 2024 (friable asbestos);
 - (e) Munn Reserve, Millers Point - 17 February 2024;
 - (f) Bicentennial Park - 19 February 2024 (friable asbestos);
 - (g) North Rosebery Park - 19 February 2024;
 - (h) Honeykiss Park - 20 February 2024;
 - (i) Jubilee Park - 21 February 2024;
 - (j) Observatory Hill Park - 21 February 2024;
 - (k) Wood Street Lands - 22 February (friable asbestos);
 - (l) Harold Park - 22 February 2024;

- (m) Wentworth Park – 22 February 2024;
 - (n) Robyn Kemmis Reserve – 23 February 2024; and
 - (o) Giba Park - 26 February 2024; and
- (vii) throughout the duration of this debacle, the Lord Mayor Clover Moore has not explained to ratepayers, users of our recreational facilities or anyone else affected by the asbestos contaminated parks, why the City chose not to take action before it was too late;
- (B) the Lord Mayor be requested to:
- (i) provide written advice explaining and justifying the inaction of the Council on behalf of the residents and ratepayers of the City of Sydney including why:
 - (a) the City rejected the call by Ms Moulton to test all City parks for potential asbestos contamination until prompted by the EPA approximately one month after the initial contamination in Rozelle Parklands; and
 - (b) the Lord Mayor has failed to exercise a duty of care in relation to the asbestos risk by not proactively prioritising testing and inquiries into the potential risk given the available and disturbing information and in keeping Councillors informed on behalf of the community and ratepayers safe and fully informed of the potential risks;
 - (ii) write to key stakeholders in the LGBTQIA+ community apologising for the City's partial responsibility for the cancellation of the Mardi Gras Fair Day at Victoria Park due to the lack of proactive investigation into the potential asbestos contamination of the City's parks; and
 - (iii) write to the key stakeholders in the Yabun Festival held on 26 January 2024 at Victoria Park apologising for the City's lack of communication regarding the lack of proactive investigation into the potential asbestos contamination of the City's parks and festivalgoers' potential exposure to asbestos considering Victoria Parks' positive contamination result after the festival had taken place; and
- (C) the Chief Executive Officer be requested to:
- (i) disclose how much it has cost and will continue to cost the City to:
 - (a) test all sites necessary where there may be asbestos contamination;
 - (b) construct fences, tape affected areas and install signs to keep the public out of harm's way;
 - (c) hire licensed asbestos removalists to clean up the sites;
 - (d) provide adequate insurance to cover any risk to Council resulting from Council's neglect to act and care for the community properly; and
 - (e) remediate all contaminated sites;
 - (ii) provide Councillors with a copy of the contract and tender documents that the City has with its mulch supplier/s and responses from suppliers concerning their testing practices; and

- (iii) explain to Councillors via a CEO Update what compliance measures were implemented in the tender and contractual process undertaken by the City with its mulch supplier/s to ensure adherence to best practice and the law in avoiding the risk of asbestos exposure or harm to any person.

The motion was lost on the following show of hands –

Ayes (4) Councillors Gannon, Jarrett, Scott and Weldon

Noes (6) The Chair (the Lord Mayor), Councillors Chan, Davis, Ellsmore, Kok and Worling.

Motion lost.

X086657

Points of Order

During discussion of Item 4.2, Councillor Chan raised a point of order pursuant to clause 6.4 of the Code of Meeting Practice, stating that Councillor Jarrett had made an imputation of improper motives.

The Chair (the Lord Mayor) did not uphold the point of order.

Councillor Davis further raised a point of order pursuant to 6.4 of the Code of Meeting Practice, stating that Councillor Jarrett had made an imputation of improper motives.

The Chair (the Lord Mayor) upheld the point of order, and Councillor Jarrett withdrew the relevant comment.

Item 4.3 Asbestos Contamination of City Parks and Gardens

Procedural Motion

At this stage of the meeting, it was moved by Councillor Weldon and seconded by Councillor Ellsmore -

That Item 4.2 be withdrawn as the matter had already been dealt with at Item 3.

Carried unanimously.

X086653

At 1.52 pm the meeting concluded.

Chair of a meeting of the Council of the City of Sydney held on Monday 11 March 2024 at which meeting the signature herein was subscribed.