
GENERAL MANAGER'S REPORT

ITEM 9.2 SF600 160113 TRANSFER OF OWNERSHIP OF THE NAMBUCCA HEADS SENIOR CITIZENS CENTRE FROM COUNCIL TO THE NAMBUCCA SENIOR CITIZENS CLUB INC.

AUTHOR/ENQUIRIES: Michael Coulter, General Manager

SUMMARY:

At Council's meeting on 10 October 2012 it was resolved:

"that Council approach the Nambucca Senior Citizens Centre with a view to arranging a meeting to discuss a possible partnership with U3A and a mutually agreeable arrangement for sharing of the facility. Further, that the opportunity for transfer of the building from Council ownership to the Senior Citizens Centre Committee also be discussed."

Council's Delivery Program indicates that Council has to determine how it will reduce its services to a level which is financially sustainable. One of the measures that may help reduce Council's expenditure on infrastructure is identified as:

- *transfer Senior Citizens Centres to Incorporated Committees*

The transfer of the building to the Nambucca Senior Citizens Club Inc. will remove maintenance costs as well as the depreciation expense from Council's accounts. Council can still provide support to the Club through its Grants Officer and Donations Policy.

Recommendation:

- 1 That Council offer to transfer ownership of the Nambucca Senior Citizens Centre to the Nambucca Senior Citizens Club Inc. with Council meeting all legal costs and any stamp duty which may be applicable. Further that the Club be requested to indicate its agreement or otherwise to this offer within 60 days.**
- 2 That the Nambucca Senior Citizens Club Inc. be advised of the provisions of the Local Government Act 1993 in relation to exempting the property from the payment of rates.**
- 3 In the event that the Nambucca Senior Citizens Club Inc. agree to the offer in Recommendation 1, that Council proceed with a planning proposal for the reclassification of the land from community to operational and undertake the required public notice and public hearing.**

OPTIONS:

Council can opt to transfer the property to the Nambucca Senior Citizens Club Inc. or retain ownership of the property.

In theory Council could also proceed with a planning proposal for the reclassification of the land from community to operational without identifying a transferee. This would potentially allow the Council to transfer the property to an entity other than the Nambucca Senior Citizens Club Inc. This is not recommended as the Club has more equity in the premises than Council. It would also make the reclassification problematic as Council would not be able to identify its purpose in reclassifying the land.

The report indicates the reasons for the recommendation to transfer ownership of the property to the Nambucca Senior Citizens Club Inc.

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DISCUSSION:

At Council's meeting on 10 October 2012 it was resolved;

"that Council approach the Nambucca Senior Citizens Centre with a view to arranging a meeting to discuss a possible partnership with U3A and a mutually agreeable arrangement for sharing of the facility. Further, that the opportunity for transfer of the building from Council ownership to the Senior Citizens Centre Committee also be discussed."

The General Manager met with the Nambucca Senior Citizens Club Inc. on 25 October 2012 to discuss the use of their centre by U3A and also to discuss the transfer of the building from Council ownership. The Senior Citizens Club has extensive records of the arrangements which were put in place between Council and the Club to acquire the centre and these were subsequently supplied to Council.

The Mayor and General Manager then met with representatives of the Nambucca Senior Citizens Club Inc. and U3A on 16 November 2012. The meeting was conducted in good faith and seemed positive in terms of a resolution in relation to the use of the building by U3A.

However subsequently U3A put forward a formal proposal for the hire of the building for 4 days per week for 1 year but the offer was rejected by the Nambucca Senior Citizens Club Inc. as being inadequate. But in addition to that the Nambucca Senior Citizens Committee met on 20 November and decided to conclude their association with U3A. A resolution was passed by the Committee of Management and the members that all property and equipment of U3A be removed by 3 December 2012 plus all keys belonging to Nambucca Seniors be returned to the Secretary by this date. The details of the offer reported to the General Manager are in a closed report.

There would seem to be no further action that Council can take in relation to the disagreement over the rental of the premises. Council has appointed the Nambucca Senior Citizens as a Section 355 Committee of Management with delegated powers to, *"undertake and regulate the casual hiring of premises and grounds"*. In addition, the Nambucca Senior Citizens Club Inc. can demonstrate substantial equity in the premises having funded most of the acquisition and subsequent extensions.

This report concerns the second part of Council's resolution being the opportunity to transfer ownership from Council to the Senior Citizens Club.

History of the Nambucca Senior Citizens Centre

The history of the acquisition of the building from the Senior Citizens records is **attached**.

As the records indicate, initially it was proposed that crown land in Nambucca Heads be provided as a site for the construction of a senior citizens centre. The Government Gazette of 18 July 1986 identified land for the provision of a community centre off Riverside Drive. There is evidence of subsequent negotiations whereby Autumn Lodge (now Nambucca Valley Care) would build and maintain the centre but which would be operated by the Senior Citizens Club. For whatever reason, this proposal did not proceed. The land was incorporated into the Riverside Gardens development which is now owned by Nambucca Valley Care.

The Nambucca Senior Citizens Club continued with their fund raising and following a report to Council on 21 July 1994, it was resolved to acquire the property at No. 11 Kent Street (Part Lot 2 DP 330678) with the Nambucca Senior Citizens Club Inc. funding \$141,000 of the required \$221,000 to acquire the property and extend the building. Therefore, notwithstanding Council ownership of the property, the Senior Citizens Club can demonstrate it has more equity in the property than Council.

The resolution did not include the classification of the property as community or operational pursuant to the Local Government Act 1993 so by default it is classified as community land.

At the meeting with representatives of the Senior Citizens Club on 25 October 2012 there was general support for the transfer of the property from Council to the Club. The Senior Citizens representatives did

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request advice as to whether the property, if transferred into their ownership, would be subject to the payment of rates.

Liability for Rating

Section 556 of the Local Government Act 1993 provides the following exemptions from the payment of rates, other than water supply and sewerage charges.

556 *What land is exempt from all rates, other than water supply special rates and sewerage special rates?*

(1) *The following land is exempt from all rates, other than water supply special rates and sewerage special rates:*

- (a) *land that is a public place,*
- (b) *land used for a public reserve and vested in the Crown, a public body or trustees,*
- (c) *land used for a common and vested in the Crown, a public body or trustees,*
- (d) *land used for a public cemetery and vested in the Crown, a public body or trustees,*
- (e) *land used solely for a free public library and vested in the Crown, a public body or trustees,*
- (f) *land acquired under an environmental planning instrument for the public purpose specified in the instrument and not leased for private purposes,*
- (g) *land that is held under a lease from the Crown for private purposes and is the subject of a mineral claim granted under Division 4 of Part 9 of the Mining Act 1992 and that the council has declared is not rateable,*
- (h) *land that belongs to a public benevolent institution or public charity and is used or occupied by the institution or charity for the purposes of the institution or charity.*
- (i) *land that belongs to a public hospital ...*

From 3 December 2012, the Australian Charities and Not-for-profits Commission (ACNC) is responsible for determining Public Benevolent Institution (PBI) status. The ACNC registers organisations as charities, including particular types of charities such as Public Benevolent Institutions. The Australian Taxation Office accepts that an organisation is a PBI if it is registered by the ACNC as a PBI.

The following Factsheet from the ACNC's website indicates the criteria used to assess applications for registration as a public benevolent institution.

Factsheet: What is a public benevolent institution?

A public benevolent institution (PBI) is a type of charity that can register with the Australian Charities and Not-for-profits Commission (ACNC). Public benevolent institutions (like health promotion charities) can apply for charity tax concessions and may be eligible for deductible gift recipient (DGR) status with the Australian Tax Office (ATO). If you want to be a DGR under the public benevolent institution category, your charity must first be registered as a public benevolent institution with the ACNC and satisfy other requirements of the ATO.

This factsheet explains what a public benevolent institution is. It sets out the key characteristics, but your organisation may have other characteristics that may still make it a public benevolent institution.

Some of the words used may seem old-fashioned, but they are still used in charity law, which has developed over hundreds of years. We have tried to explain them.

What is a public benevolent institution?

The meaning of public benevolent institution has been developed by law made by judges and parliament (such as the ACNC Act). These organisations are recognised by the ACNC and ATO as a type of charity.

The specific legal meaning of public benevolent institution is 'a charitable institution that provides direct benevolent relief to people in need'.

Examples of public benevolent institutions include some disability support services, aged care services

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and low rental or subsidised housing for people in need.

Is my charity a public benevolent institution?

Your charity may be a public benevolent institution if it:

- *meets the legal meaning of charity*

- *is an institution*

- *provides direct benevolent relief as its main purpose*

- *provides that relief to people in need.*

Is my charity an institution?

An institution is an 'establishment, organisation or association, instituted for the promotion of some object, especially objects of public utility, or that are religious, charitable or educational.

To be an institution your charity must be not be merely a fund. It must do more than just distribute funds to other organisations or individuals, or simply make property available for others (as a fund may do). It must have its own activities or engage others to undertake activities on its behalf.

To show that your charity is an institution you need evidence of the activities your charity undertakes, for example, details of programs that it runs or staff hours.

Your charity may need to have a separately identifiable structure to be an institution, but it does not need to have a particular legal structure to fit the definition. However, its size and permanence are also relevant.

Does my charity provide direct relief?

Direct relief means that the benefit is provided directly to people who need it. The organisation can provide this itself through its own staff and volunteers doing the work, or through others acting on its behalf.

Some examples include medical clinics treating people who are sick, accommodation services providing accommodation to people who are experiencing homelessness and emergency services rescuing people in danger.

Does my charity provide benevolent relief?

Benevolent relief includes working for the relief of poverty, sickness, disability, destitution, suffering, misfortune or helplessness.

The degree of suffering or distress is also important and your charity only meets the definition if the need it tries to meet is:

- *significant enough (and the circumstances difficult enough) to arouse compassion in people in the community, and*

- *beyond the suffering experienced as part of ordinary daily life.*

Your charity does not have to provide material help. The need relieved also does not have to be financial

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hardship or caused by poverty, but can be other needs. For example, a charity that provides education and activities to disadvantaged young people that help them gain skills and self-confidence in life may be a public benevolent institution.

As long as a charity's main purpose is benevolent, it can also have other non-benevolent purposes that are incidental.

Who does my charity have to provide direct benevolent relief to?

The relief provided must only be for people. Your charity must also show that it works for a section of the community that clearly needs help, in other words 'people in need'.

'Public' refers to who your charity works for. The benefit can be for a section of the community (as long as it is needy) and does not have to be for the benefit of the community as a whole.

An example may be a charity that works for the promotion of Aboriginal culture. If it can show that the community it works for is in need of assistance, it can be a public benevolent institution.

Therefore to achieve a rating exemption the Nambucca Senior Citizens Club Inc. must lodge an application with the Australian Charities and Not-for-profits Commission (ACNC) for a determination that they are a *public benevolent institution or public charity*. Council cannot of itself exempt properties from the payment of rates unless the exemption meets the requirements of the Local Government Act.

Conclusion

Whilst the property at 11 Kent Street is currently in good repair, it is an older timber building and will require proportionately more maintenance than a newer brick building on a concrete slab. Also notwithstanding that Council is the registered owner of the property, the Nambucca Senior Citizens Club Inc. can demonstrate they have more equity in the property than Council. This may make it more problematic, at least from a political/moral perspective, to direct the Nambucca Senior Citizens Club Inc. in relation to the use of the property. Indeed there is no evidence that in the 19 years since the establishment of the Senior Citizens Centre that Council has provided any direction as to the use of the property.

Council's Delivery Program indicates that Council has to determine how it will reduce its services to a level which is financially sustainable. One of the measures that may help reduce Council's expenditure on infrastructure is identified as:

- *transfer Senior Citizens Centres to incorporated committees*

The transfer of the building to the Nambucca Senior Citizens Club Inc. will remove maintenance costs as well as the depreciation expense from Council's accounts. Council can still provide support to the Club through its Grants Officer and Donations Policy.

The property will need to be reclassified as operational land before it can be transferred to the Club. This is a laborious process even when there is no community opposition. The reclassification must be undertaken by way of a planning proposal (local environmental plan) and the Council must conduct a public hearing into the reclassification regardless of whether or not it receives any public submissions.

CONSULTATION:

There has been consultation with the Nambucca Senior Citizens Club Inc. and U3A.

SUSTAINABILITY ASSESSMENT:

Environment

There are no implications for the environment.

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Social

There are no social implications as there will be no change to the management of the Senior Citizens Centre.

Economic

There are no economic implications.

Risk

There are no identified risks. If Council was to retain ownership of the building there will be on-going costs in relation to periodic inspections for building fire safety and pests, insurance, as well as required maintenance such as painting and over time more significant capital expenditure for renewing the building. As an example the Council spent \$22,000 in the 2011/2012 year on repainting the whole building.

FINANCIAL IMPLICATIONS:**Direct and indirect impact on current and future budgets**

The transfer of the building will remove maintenance and depreciation costs from Council's future budgets.

There will be a "one off" cost in transferring ownership of the building. The cost will depend on whether or not stamp duty is payable on the transfer. If stamp duty is not payable then the costs of the transfer should be less than \$5,000. If stamp duty is payable then the cost will be in the vicinity of \$14,000 based on an estimated property valuation of \$300,000.

Source of fund and any variance to working funds

At this stage there is no impact on working funds.

ATTACHMENTS:

1 28786/2012 - Copies of documents - Nambucca Senior Citizens Club Inc. 0 Pages

TO: General Manager (Michael Coulter)

Subject: Transfer of Ownership of the Nambucca Heads Senior Citizens Centre from Council to the Nambucca Senior Citizens Club Inc.
Target Date: 30/01/2013
Notes:
Trim Reference SF600 (33325/2012)

14/13 **RESOLVED:** (Finlayson/Ainsworth)

- 1 That Council offer to transfer ownership of the Nambucca Senior Citizens Centre to the Nambucca Senior Citizens Club Inc. with Council meeting all legal costs and any stamp duty which may be applicable. Further that the Club be requested to indicate its agreement or otherwise to this offer within 60 days.
- 2 That the Nambucca Senior Citizens Club Inc. be advised of the provisions of the Local Government Act 1993 in relation to exempting the property from the payment of rates.
- 3 In the event that the Nambucca Senior Citizens Club Inc. agree to the offer in Recommendation 1, that Council proceed with a planning proposal for the reclassification of the land from community to operational and undertake the required public notice and public hearing.

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ACTION TAKEN BY OFFICER

ONGOING / COMPLETED

Completion date: _____

(Please update once item is actually completed)

Details:

GENERAL MANAGER'S REPORT

ITEM 9.16 SF1618 101012 OPPORTUNITIES TO FIND U3A A PERMANENT HOME

AUTHOR/ENQUIRIES: Michael Coulter, General Manager

SUMMARY:

The report is brief. A summary is not required.

Recommendation:

That the U3A be advised that Council is prepared to assist in locating a site for a purpose built facility, which may include Council owned land, but that Council is unable to fund either the capital or recurrent costs of such a facility. Further Council would be pleased to assist the U3A in using or adapting for use an existing Council facility in consultation with the facility's Committee of Management.

OPTIONS:

There are no real options. Council does not have the funds in its Operational Plan or Delivery Program to provide cash for a site and/or facility for U3A.

DISCUSSION:

Council received an address in its Public Forum on 26 July 2012 from Ms Rita Spencer on the need for U3A to be located in its own premises. It was resolved that:

"Council receive a report as to any potential opportunities which may exist for Council to assist the U3A in finding permanent premises".

Ms Spencer advised Council that U3A provides life long learning for a healthy retirement and has developed a very large base in the Nambucca Valley with 344 members. It is the fastest growing sector of adult education in the country and offers 43 subjects across a broad range of interests. Ms Spencer noted that currently U3A in the Nambucca Valley operates out of 7 different venues and she sought Council's assistance in providing a permanent base/headquarters/rooms for their activities.

The matter has been discussed with Council's Grants Officer. The requisite funding for a purpose built facility would be at a minimum \$400,000 to \$500,000. There are no grant programs which provide this level of financial assistance.

Council's financial position is such that it cannot afford such expenditure. According to Council's Long Term Financial Plan there is no prospect of such funding being secured even in the long term.

Council does own land which may be suitable for locating U3A premises and which it could make available on reasonable terms. For example the unused Farrington Fields or E J Biffin Fields are well located for their client base and have ample flat, serviced land for both a building as well as off street parking.

Besides the potential offer of land, Council has a very large supply of underutilised halls which may be suitable for their activities. In particular the Nambucca Entertainment Centre is well located and sized for meetings and training. If storage of equipment is an issue the relevant Committee of Management could enter into arrangements for the provision of storage facilities in return for a regular booking schedule. It is understood that the Nambucca Entertainment Centre Committee of Management is proceeding to providing air conditioning for the small hall which will further improve its amenity for learning and meetings.

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In the circumstances it is suggested that Ms Spencer be advised that Council is prepared to assist U3A in locating a site for a purpose built facility, which may include Council owned land, but that Council is unable to fund either the capital or recurrent costs of such a facility. Further Council would be pleased to assist the U3A in using or adapting for use an existing Council facility. Again Council would not be able to assist with either capital or recurrent funding.

CONSULTATION:

There has been consultation with Council's Grants Officer.

SUSTAINABILITY ASSESSMENT:**Environment**

There are no implications for the environment.

Social

U3A performs a very important social function in providing learning opportunities and social activities for retirees.

Economic

There are no significant economic implications.

Risk

There are no discernible risks.

FINANCIAL IMPLICATIONS:**Direct and indirect impact on current and future budgets**

At this stage there is no budgetary impact.

Source of fund and any variance to working funds

There is no impact on working funds.

ATTACHMENTS:

There are no attachments for this report.

TO: General Manager (Michael Coulter)

Subject: Opportunities to find U3A a permanent home
Target Date: 11/10/2012
Notes:
Trim Reference SF1618 (26190/2012)

3602/12 **RESOLVED:** (Flack/Morrison)

That Council approach the Nambucca Senior Citizens Centre with a view to arranging a meeting to discuss a possible partnership with U3A and a mutually agreeable arrangement for sharing of the facility. Further, that the opportunity for the transfer of the building from Council ownership to the Senior Citizens Centre Committee also be discussed.

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