**General Manager**

**ITEM 9.7 SF2397 260919** **Nambucca Valley Connected - Bowraville Sporting Hub - Proposed Reclassification of Sporting Precinct as Operational Land**

**AUTHOR/ENQUIRIES:** Michael Coulter, General Manager

|  |
| --- |
| **Summary:**  The report concerns making progress on the proposed Nambucca Valley Connected – Bowraville Sporting Hub proposal via a reclassification of Lot 482 DP 700681 from Community to Operational land and secondly via the provision of funding for the preparation of costed DA plans.  **NOTE: This matter requires a “Planning Decision” meaning a decision made in the exercise of a function of the council under the Environmental Planning and Assessment Act 1979 including a decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan. Under Section 375A of the Local Government Act 1993 it requires the General Manager to record the names of each Councillor supporting and opposing the decision.** |

*Do not delete this line*

|  |
| --- |
| **Recommendation:**   1. **That Council seek approval to reclassify Lot 482 DP 700681 being the land shown in darker green shading on the attached plan as Operational Land.** 2. **That Council put an offer to the Member for Oxley that it will provide up to $25,000 subject to an equivalent contribution from the State Government to allow for the preparation of costed plans to a development application standard for the Hub facility.** 3. **In relation to the preparation of costed plans to a development application standard, the Hub Working Party be advised that Council’s financial contribution of up to $25,000 will be subject to a matching contribution from the State Government as well as a funding deed which would set out a timeline for the preparation of plans; the required standard for the plans; the components to be costed; as well as a contingency.** 4. **In the event that the State Government provides matching funding, the General Manager be provided with delegated authority to prepare a suitable funding deed and to endorse that deed on behalf of Council with Council’s seal to be attached as required.** |

*Do not delete this line*

**OPTIONS:**

The Council has the option of taking no action in reclassifying community land in which case the new Bowraville Sporting Hub would be constructed on Council’s land. This would be contrary to a previous resolution and would result in significant financial risk to Council as the owner or the legal entity “in control” of a licenced club. The Council also has discretion as to whether or not it makes funding available for the preparation of costed DA plans for the Hub facility.

**DISCUSSION:**

This report was considered by Council at its meeting on 12 September 2019 and it was resolved as follows:

*“That a decision on the Nambucca Valley Connected – Bowraville Sporting Hub – proposed reclassification of sporting precinct as operational land be deferred until a future Council meeting and that a workshop with all councillors and the Hub Group members be held onsite.”*

Prior to this decision the Council had previously deferred a decision from its meeting on 15 August when it was resolved:

1. *That Council defer progressing a reclassification of Lot 482 DP 700681 until legal advice can be obtained as to whether a boundary adjustment and land swap with no net loss of community land is possible without a reclassification from Community to Operational land.*
2. *That Council and Nambucca Valley Connected – Bowraville Sporting Hub be advised of the legal advice.*

Legal advice from the law firm Marsdens has now been obtained and that advice is **attached.**

In summary the legal advice confirms the author’s opinion that a reclassification of land is required, regardless that it may involve a land “swap” where equivalent areas of land are exchanged such that there is no change to the area of the community land.

The concluding remarks in the Marsden’s advice are as follows:

*“… it seems to us that the proposal of land swap still involves the disposal of Council land in that the proposal involves the Council allowing the transfer of the ownership of the Council land to another entity. It does not matter if, in return, Council receives a gift of other land. It is still a disposal of its own land.*

*As stated by Justice Basten in the case of Kogarah Municipal Council v Golden Paradise Corporation (2005) NSWCA 230 at paragraph 99*

*“99 …s45 of the LG Act speaks in unequivocal terms. It renders a council powerless to sell, exchange or otherwise dispose of community land”.*

*It seems to us that the land swap as proposed by BSH Inc is either an exchange or disposal of land and as the Council land is classified as community land under the LG Act section 45 of the LG Act operates so that Council does not have the power to do so.*

*In order for Council to enter into a transaction which involves the disposal of the land it is necessary for it to take steps to reclassify the land as operational under the LG Act.”*

For Council’s information there was also a meeting involving the Bowraville Sporting Hub Working Party, the Member for Oxley and the Mayor and General Manager on 15 August 2019. The Member for Oxley advised that the promised $3m funding for the Hub complex would not become available until the 2021/2022 financial year.

As the Hub Working Party is keen to progress with their planning processes, notwithstanding the funding not being available until 2021/2022, they sought some funding to progress with their plans. In the circumstances it is considered reasonable to put an offer to the Member for Oxley that Council provide up to $25,000 subject to an equivalent contribution from the State Government to allow for the preparation of costed plans to development application standard. The financial contribution from Council would be a part of its promised $700,000 commitment to the project.

The preparation of costed DA plans will make the community consultation for the reclassification more meaningful and will enable the planning for the project to be completed and development consent to be obtained in readiness for construction to occur in 2021/2022.

Subject to the State Government matching Council’s funding offer it is suggested that an appropriate funding deed be prepared which sets out a timeline for the preparation of plans; the required standard for the plans; the components to be costed; as well as a contingency.

Report to Council’s Meeting on 15 August 2019

At Council’s meeting on 27 June 2019 it was resolved that Council prepare a planning proposal to reclassify the land shown on the **attached** plan as the site for the Nambucca Valley Connected – Bowraville Sporting Hub from community to operational land. Council is aware that the State Government will provide funding of $3m towards the project with a further $700,000 being contributed by Council.

The proposed building, children’s playground, bowling greens and associated car park are proposed to be located at the southern end of the Hennessey Tape sporting fields.

It is understood that the Bowraville Recreation Club and the Bowraville Sporting Hub Working Party have had meetings with aged care providers to elicit interest in the development of an aged care facility on the Bowraville Recreation Club land.

In meetings between Council, the Bowraville Recreation Club and Bowraville Sporting Hub Working Party there have been some discussions about land swaps wherein the land provided for the new Bowraville Sporting Hub could be offset by land owned by the Bowraville Recreation Club being ceded back to Council. A land swap may also assist in the establishment of an aged care facility.

If Council does not reclassify the land for the new Bowraville Sporting Hub it will be unable to transfer the ownership of the facility to the newly Incorporated Association. This will pose obvious financial risks for the Council and would be inconsistent with the tenure arrangements for other similar clubs.

In the circumstances that Council has to commit to a reclassification of the land; that the reclassification of the land is a 6-12 month process; that the aged care proposal has not been finalised; and that there is a possibility that in finalising the plans of the Bowraville Sporting Hub there may be adjustments to the siting of the facility, it is proposed that the whole Hennessey Tape precinct be reclassified from community to operational land.

The land to be reclassified is shown in darker green shading on the second **attached** plan. In general terms it comprises all of the existing golf course plus most of the Hennessey Tape sporting facilities. It is a single parcel being Lot 482 DP 700681, 2 South Arm Road, Bowraville.

A reclassification of the land will provide Council with the necessary flexibility to accommodate any changes to the project as it progresses. If the reclassification process to change community land to operational land was not so onerous in terms of resources and time this wouldn’t be necessary but as it stands any unplanned change, for whatever reason, could delay progress by 6-12 months.

Once the project is completed the Council can finalise the subdivision boundaries and as part of a housekeeping amendment of the local environmental plan reclassify the land not being used as part of the project back to community land.

There will still be a public consultation process in relation to any subdivision of the land so it’s not the case that a general reclassification will prevent public consultation and feedback on the final proposal. The reclassification will simply facilitate the finalisation of the plans which will then be made available for public consultation via a development application for the facility and for its subdivision.

The Council will need to undertake a public hearing for the reclassification which is chaired by an independent person. In the first instance the Council needs a gateway approval from the Department of Planning, Industry and Environment to proceed with the exhibition of the reclassification and to organise a public hearing. In essence the reclassification process is the same as preparing a local environmental plan.

**CONSULTATION:**

There has been consultation with the Grants and Contributions Officer. Legal advice has been obtained from Marsdens. There has been discussions with the Hub Working party and the Member for Oxley.

**SUSTAINABILITY ASSESSMENT:**

**Environment**

There are no implications for the environment.

**Social**

There are no social implications.

**Economic**

There are no economic implications.

**Risk**

The report concerns minimising delays to the project caused by the onerous reclassification process.

**FINANCIAL IMPLICATIONS:**

**Direct and indirect impact on current and future budgets**

There are no budgetary implications. The legal advice cost $1,590.05 and was charged to Town Planning legal expenses.

**Working funds – justification for urgency and cumulative impact**

Besides the relatively minor cost of the public hearing there will be no impacts on working funds.

**Service level changes and resourcing/staff implications**

The preparation of a local environmental plan for a reclassification of council land is an onerous task in terms of staff time.

*Do not delete this line*

**Attachments:**

|  |  |  |
| --- | --- | --- |
| **1** | 34815/2019 - Legal advice |  |
| **2** | 23594/2019 - Bowraville Hub Plan |  |
| **3** | 30266/2019 - Proposed Reclassification |  |