

Our ref: LGS:WON004/2

23 April 2012

The Directors
Wongabri Burradoo Pty Ltd

www.sparke.com.au

Dear Sirs

Wongabri Burradoo Pty Ltd (Wongabri Burradoo)
Wongabri Burradoo Site

I refer to previous discussions and understand that there have been discussions with Council as to the possibility of a land swap of the Wongabri Burradoo site (the 70 acres of vacant land) for another site owned by Council known as Eridge Park which comprises an open space area of 30 acres. I further understand that this Council owned site is currently Community Land (Eridge Park).

I set out below a brief outline as to the process that will need to be undertaken in order for a land swap to be effected:

- As Eridge Park is community Land it will need to be converted to operational land (in accordance with the provisions of the *Local Government Act 1993*)(LG Act) In order to convert it, the process will require the preparation of a planning proposal which will lead to the making of an LEP. As a guide this process usually takes around 6 months. .
- The preparation of a planning proposal, leading towards the making of an LEP, is a legal process provided pursuant to the *Environmental Planning and Assessment Act 1979* (Division 4 of Part 3) (EP&A Act). In this way the LG Act and EP&A Act work together to deliver a particular outcome.
- This process is also necessary because it is almost certain that the land at Eridge Park is *not* zoned to permit development for the purposes of a "retirement village" or similar purpose. That is, the Eridge Park land will need to be rezoned - and that rezoning will be undertaken through the making of an LEP.
- There appears to be no reason why the change in the classification, and the rezoning, of the Eridge Park land cannot be achieved through the same LEP.
- The process whereby the LEP is made will require community publication and consultation.
- A Land Swap Deed will need to be entered into between Wongabri Burradoo Pty Ltd (as owner of the Wongabri Burradoo site) and Council that will, subject to

Erridge Park being converted to operational land, be essentially swapped with the Wongabri Burradoo site.

- The relevant provisions of the LG Act that relates to "tendering" do not apply to a contract for the purchase or sale by Council of land (s.55 (3)(d) LG Act).
- The provisions of the LG Act that relates to "public private partnerships" may apply. A "public-private partnership" is defined in s.400B of the LG Act:
 - (1) For the purposes of this Act, a *public-private partnership* means an arrangement:
 - (a) between a council and a private person to provide public infrastructure or facilities (being infrastructure or facilities in respect of which the council has an interest, liability or responsibility under the arrangement), and
 - (b) in which the public infrastructure or facilities are provided in part or in whole through private sector financing, ownership or control,but does not include any such arrangement if it is of a class that has been excluded from the operation of this Part by the regulations.

This aspect of the proposal may require further consideration and liaison with the Department of Local Government (even if only for the purpose of confirming that the proposal is *not* a public-private partnership).

It was formerly the case that:

- the sale by Council to a private person of any property – including operational land; and
- any lease or licence over any community land granted by Council to a private person;

were arrangements that could not be the subject of a public-private partnership. The Regulations were amended in 2007 to remove these restrictions on public-private partnerships (cls 408 LG (General) Regulations 2005).

- The public and ministerial scrutiny that arises under the making of an LEP may also apply with respect to the overall intention of the land swap (and development) having regard to the private and public purposes that are to be achieved through these arrangements.
- There will be conditions precedent that will need to be satisfied prior to the transfers being effected which will include obtaining any required rezoning / approvals and relocation of facilities. There will be further conditions precedent depending upon the specifics of the transaction.
- Once the conditions precedent are satisfied, the respective transfers will be entered into simultaneously; the consideration for each will be the swap of the respective sites.

The Land Swap Deed will include provisions to the effect that Wongabri Burradoo must promptly arrange for preparation of any incidental documents.

Council must allow access to Erridge Park for the purpose of Wongabri Burradoo undertaking any investigations.

The forms of transfer will be attached to the Land Swap Deed and will provide that Wongabri Burradoo must transfer the Wongabri Burradoo site to Council for \$1 and Council must transfer the Erridge Park site to Wongabri Burradoo for \$1. Wongabri Burradoo will be responsible for payment of stamp duty in respect of the transfer of the Erridge Park site. In our view, Council should be exempt under s 277 of the Duties Act to payment of stamp duty in respect of its acquisition of the Wongabri Burradoo site. The transfers must be registered at the Land Titles Office once the relevant conditions precedent, which are to be determined, are satisfied.

Wongabri Burradoo will also arrange for works at the Wongabri Burradoo site to be undertaken. The Wongabri Burradoo works will be determined by reference to a scope of works.

Wongabri Burradoo must also enter into an agreement with Council to grant Wongabri Burradoo a lease for a term to be agreed of the Mittagong facility and Wongabri Burradoo will undertake the Mittagong facility works.

If the Mittagong facility is community land, a lease can be granted in accordance with the relevant plan of management (s. 46 LG Act).

On the assumption that the Mittagong facility is community land, a lease of that facility for a period in excess of five years must be granted in accordance with section 47 of the LG Act. There is a particular process that must be observed with respect to such a lease, which includes public notification of the proposed lease. If an objection to the proposed lease is received during the course of public notification, the Minister's consent is required to the lease. There is a process that the Council and Minister must follow in those circumstances.

Please contact me if you wish to discuss or require elaboration on any point.

Yours faithfully

Leon Sakaris
Partner