

MINUTES

for the Special (emergency) meeting of Council held in the Council Chambers on Monday, 25 May 2009, commencing at 1:30pm.

Section 89 (4) of the *Local Government Act 1989* ("the Act") requires that Council must give at least 7 days notice of an ordinary or special Council meeting. Where such notice is not given Section 89 (4A) (b) of the Act requires that the urgent or extraordinary circumstances which prevented Council from complying, be specified in the minutes.

This meeting was called at 10.00 AM on 25 May 2009. The circumstances requiring this action were that Council was advised that a priority sale of the land that is the subject of Item 5.1 on this agenda must be completed by 30 June. In order to conduct the section 189 process as required under the Act, the deadline for the priority sale necessitated the calling of a Special (emergency) meeting.

Present

Cr M Byatt (Mayor)

Cr A Collins (Deputy Mayor)

Cr E Foulston

Cr A Speedie

Cr R Wangman

In Attendance

Mr G Cator

Chief Executive Officer

Mr J Louw

Director Sustainable Development



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Appendices

Appendix A Letter from former CEO to Department of Defence requesting priority sale.

Appendix B Letter from Department of Defence consenting to priority sale.

Appendix C Plan of the subject land.

1. Statement of Acknowledgment

The Mayor opened the meeting and read the statement of acknowledgment.

2. Apologies and Requests for Leave of Absence

Apologies were given by Cr C Ferguson and Cr L Mahood.

3. Declaration under Acts, Regulations, Codes or Local Laws

Nil

4. Declarations of Conflict of Interest

Nil

5. Officers Reports for Determination

5.1 *Section 189 process for sale of land to Borris Pty Ltd T/a JMP Developments*

Report prepared by Director Sustainable Development

PURPOSE OF REPORT

In June 2007, Albury Wodonga Corporation sold by auction, all of its land surrounding the Former Bandiana Sewerage Treatment Plant. The land was purchased by Mr John Butko of Borris Pty Ltd T/a JMP Developments in June 2007.

Following a written request from JMP Developments, Council approached the Department of Defence to formally request consideration of a priority sale to Council. The reason for Council making the request is to overcome Commonwealth restrictions that do not allow the direct sale of land to occur to a non Government entity. The justification for the Council making this request was to ensure the subject land was incorporated into an overall plan of the Killara area. Currently the subject land is completely encircled by the JMP Developments land and its inclusion in their development plans delivers the best planning outcome for the city (in terms of layout and coordination of infrastructure services).

Contract arrangements are being made to ensure that the transaction is cost neutral and entirely risk free to the Council.

BACKGROUND

The subject land is completely surrounded by the JMP Developments property and would pose problems to the provision of infrastructure and achievement of an efficient urban subdivision pattern if sold to another party.

The priority sale request was made following discussion with councillors at a councillor briefing. Further representations were made to the Department of Defence in March 2008 by the CEO and Mayor in support of the priority sale request. Attached as Appendix A is a copy of the priority sale request made on 26 September 2007.

The Department of Defence has deemed the site surplus to their requirements and consented to the priority sale (refer Appendix B) under the following conditions:

- 1) Demolition and contamination clean up works would be the responsibility of the developer.
- 2) The developer would be responsible for all associated costs of transfer including those of Council and the Department of Defence, including interest payments should settlement be delayed.
- 3) The Council would transfer the land directly to the developer at market value and would not benefit financially from the transfer.
- 4) The developer would agree to pay the market value assessed by the Australian Valuation Office.

The negotiation of this contract has been complex in regard to agreement on a number of clauses within, and it has been important for us to maintain the position of the transaction being entirely risk free to Council.

There had been considerable delay in negotiating the agreement of a suitable settlement date on behalf of the developer, but this has now been resolved.

The current standard Defence contract makes reference to the purchaser acknowledging and accepting that the Property may be affected by unexploded ordinances. This was not acceptable to the developer and lengthy negotiation has since resulted in this clause being withdrawn from the contract.

Legal advice needed to be sought regarding clarification as to whether Council needed to provide a separate valuation to that provided by the Commonwealth, bearing in mind Council would only hold the land for a period of approximately 30 minutes. Legal advice has confirmed that this will be necessary.

Advice from Bob Brinkley from Department of Defence on 25 May 2009 is that, whilst they appreciate the delays were with good reason, due to their own budget implications, the offer to sell will be retracted if this contract cannot be exchanged by the end of this financial year i.e. 30 June 2009.

COUNCIL PLAN/KEY STRATEGIC ACTIVITY

N/A

COUNCIL POLICY/STRATEGY IMPLICATIONS

Legal advice has been sought regarding Council's obligations to provide public notice of an intention to sell land under Section 189 of the Local Government Act, and although Council will be immediately on selling the land it will be necessary to provide public notice to this effect. As the valuation is now more than six months old, it will also be necessary to obtain an updated valuation, the cost of which will be the responsibility of the developer.

RISK MANAGEMENT IMPLICATIONS

The contract will impose any indemnity and all associated costs of transfer on the developer. The contract will transfer any liabilities to the purchaser from Council.

FINANCIAL IMPLICATIONS

JMP Developments have agreed to be responsible for all associated costs of the transfer including both Councils and the Department of Defence. As Council will transfer ownership of the land on the same day as settlement, there would be no budget implications.

ENVIRONMENTAL IMPLICATIONS

As part of the investigation process to sell the land the Department of Defence undertook an environmental assessment of the former sewerage treatment plant. The report undertaken by ENSR Australia Pty Ltd has provided a statement indicating that sample testing undertaken suggest the site is not contaminated.

Contract obligations will ensure any clean up of the site will be the responsibility of JMP Developments.

CONSULTATION PROPOSED / UNDERTAKEN

The Department of Defence engaged ENSR Australian Pty Ltd to undertake soil sampling on the site. The Australian Valuation Office conducted a valuation in May 2008.

CONCLUSION

The priority sale allows the Council to achieve a better urban development outcome at no cost or risk to the Council.

RECOMMENDATION

That Council resolves in accordance with the Local Government Act 1989 (Act):

1. to give public notice under section 189 of the Act of its intention to sell the land known as Lot 1 and Lot 2, TP 849697H, CT Vol 10843 Folio 038, being the land shown outlined on the plan attached as Appendix C (Land), to Borris Pty Ltd T/a JMP Developments;
2. to authorise the Chief Executive Officer to undertake the administrative procedures necessary to enable Council to carry out its functions under section 223 of the Act in relation to this matter; and
3. to hear any submissions received in relation to the proposed sale of the land under section 223 of the Act at a meeting of Council to be held at 6.00 PM on Thursday, 25 June 2009 at the Committee Room, level 2, Council offices, Hovell Street, Wodonga.
4. that a report on the priority sale of the land and the result of the section 189 and section 223 process be submitted to the ordinary Council meeting of 29 June 2009.

During discussion of this item it was noted that the soil testing of the site by ENSR Australian Pty Ltd (refer section in report on consultation proposed / undertaken) has been completed.

Councillors Foulston / Wangman

That Council resolves in accordance with the Local Government Act 1989 (Act):

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2. to authorise the Chief Executive Officer to undertake the administrative procedures necessary to enable Council to carry out its functions under section 223 of the Act in relation to this matter;
3. to hear any submissions received in relation to the proposed sale of the land under section 223 of the Act at a meeting of Council to be held at 6.00 PM on Thursday, 25 June 2009 at the Committee Room, level 2, Council offices, Hovell Street, Wodonga;
4. that a report on the priority sale of the land and the result of the section 189 and section 223 process be submitted to the ordinary Council meeting of 29 June 2009; and

Further, that Council resolves to write to Borris Pty Ltd T/a JMP Developments, and the Department of Defence expressing its disappointment that it was necessary for Council to hold a Special (emergency) meeting to deal with this matter.

CARRIED 2009-91

6. Closure of Meeting

There being no further business the meeting closed at 1.38 PM.

Chairperson

Date

Appendix A

Copy of letter from former CEO to Department of Defence requesting priority sale

26 September 2007

Reference: T50.0650
OUT2007/129D93AB
Enquiries: Darren Rudd

David French
Property Disposals
R4-2-25
Russell Offices
CANBERRA ACT 2660

Dear David

Re: Request for Priority Sale – Former Bandiana Sewerage Treatment Works, Allotments 5 & 6 Kenneth Watson Drive, Killara (Wodonga)

In June of this year the Albury Wodonga Corporation sold by auction, all of its land holdings surrounding the former Bandiana Sewerage Treatment Plant site. The land is now owned by Mr JC Butko who has written to the Council and asked if the Council would approach your office and request the sale of this land to the Council. The Council has agreed to support the request and formally requests your consideration of a priority sale of this land to the Council. A copy of a plan highlighting the subject land is attached for your information.

The request is made on the basis that the land will be transferred in an “as is” condition and the community benefits of such a decision are derived through the Council being able to use its planning powers and powers as a land owner to ensure the site is decontaminated prior to development. The best planning outcome for the Council would be if this land was cleaned up and developed in association with the development of the adjoining land. It is contended that the likely cost of decontamination as an isolated site would marginalise the option to develop this land in its own right and the best outcome would be to defray these costs across a larger project.

It is understood that the land if sold on a priority sale basis is sold at market value with the purchaser being liable for all legal costs.

It would be appreciated if you could advise whether the request for priority sale can be supported or otherwise when it could be put to the market for sale. If you require any further information in support of the request please feel free to contact the Council’s Manager Strategic Planning, Mr Darren Rudd at this office.

Yours faithfully

Peter Marshall
Chief Executive Officer

Enc

Appendix B

Copy of letter from Department of Defence consenting to priority sale



Australian Government

**Department of Defence
Defence Support Group**

Michael Healy
Assistant Secretary
Property Services
BP3-2-A070
Department of Defence
CANBERRA ACT 2600
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Tel: 02 6266 8650
Fax: 02 6266 8276

ASPS/OUT/2008/169

Mr Michael Gobel
Acting Chief Executive Officer
City of Wodonga (Council)
PO Box 923
Wodonga VIC 3689

Dear Peter

FORMER BANDIANA SEWAGE TREATMENT WORKS, KILLARA (WODONGA)

I refer to correspondence from City of Wodonga (Council) dated 26 September 2007, which requested priority sale consideration of the former Bandiana Sewage Treatment Works site, Killara (Wodonga), VIC.

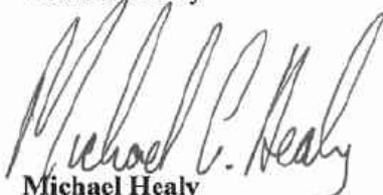
I am pleased to advise that the Australian Government has approved the priority sale of this site, at full market value, to the City of Wodonga (Council). The priority sale has been supported subject to the conditions outlined in Council correspondence dated 26 September 2007, and provided that there is no commercial uplift in price when on sold to local developer, Mr J C Butko.

The site was valued by the Australian Valuation Office (AVO) in May 2008 at \$1,250,000, allowing for the cost of remediation by Council. The current market value assessed as \$1,250,000 represents the purchase price. A copy of this valuation is enclosed.

In addition, Defence recently engaged ENSR Australia Pty Ltd to perform some limited soil sampling at the site. Based on field observations and soil analytical results, soil contamination was not identified at the test pit sample locations. A copy of this report has been enclosed for your information.

Property Disposals Project Officer, Ms Belinda Nixon, will be forwarding contract details once available.

Yours sincerely



Michael Healy
Assistant Secretary
Property Services

20th August 2008

Appendix C

Plan of the subject land

