

 Adelaide Plains Council	21.2	Proposed Lease of Council Land – NBN Radio Network Base Station Update
	Department:	Infrastructure and Environment
	Report Author:	Property Officer
Date: 27 May 2019	Document Ref:	D19/24383

EXECUTIVE SUMMARY

- The purpose of this report is to seek direction from Council in relation to lease negotiations between Council and the Thompson Beach Progress Association (TBPA), and Council and NBN Co Ltd (NBN).
- Council, by way of resolution at its meeting on 26 February 2018, gave *in principle* support to the notion of allocating to TBPA the proposed annual rental income of \$7,500 payable by NBN, subject to:-
 1. *Further liaison with the TBPA to amend their current lease agreement to remove the area required for NBN Co Ltd for the erection of a radio network base station; and*
 2. *Negotiations continuing between Council and NBN Co Ltd to finalise the terms and conditions of the proposed lease agreement as per Council Resolution 2017/283.*
- Negotiations between Council and TBPA, and Council and NBN, are now at a point where Management requires TBPA to execute a Deed of Partial Surrender, so that the relevant portion of land can be leased to NBN.
- TBPA have indicated that they are not prepared to surrender the land or vary the lease until Council has provided an assurance in relation to passing on the rental income. Based on discussions between management and TBPA representatives, it is understood that the words ‘in principle support’ create uncertainty to TBPA.
- With an ongoing resolution providing *in principle* support to the notion outlined above, it is recommended that Council confirm its position by way of resolution, in order to assist and facilitate Management in negotiations with TBPA to execute a deed of partial surrender. Clarification regarding the extent and duration of Council’s position is also required. Conversely, should Council wish to uphold its previous resolution of ‘in principle’ support, Management will communicate this to TBPA. It is noted that, according to email communications (**Attachment 1**), TBPA support in facilitating the execution of the deed of partial surrender is ‘tenuous’.

RECOMMENDATION

“That Council, having considered Item 21.2 – *Proposed Lease of Council Land – NBN Radio Network Base Station Update* dated 27 May 2019, receives and notes the report and in consideration of Resolution 2018/073”

BUDGET IMPACT

Estimated Cost: Nil. NBN Co have agreed to reimburse Council for legal costs associated with establishing the legal framework required for this project.

Future ongoing operating costs: Nil

Is this Budgeted? Not Applicable

RISK ASSESSMENT

TBPA have indicated that they are not prepared to surrender the land or vary the lease until Council has provided an assurance in relation to passing on the rental income. The words ‘in principle support’ create uncertainty.

It is recommended that Council confirm its position by way of resolution. Should Council maintain its support on an ‘in principle’ basis, TPBA may not agree to execute a Deed of Partial Surrender.

Attachments

1. Copy of email exchange between Thompson Beach Progress Association and Adelaide Plains dated 17 May 2019.

years and the lease fee is to be indexed annually. Clarification regarding the extent and duration of Council's in principle support position is also required.

Deed of Partial Surrender

In order for Council to lease the relevant land to NBN, TBPA must first relinquish that land from the existing lease between Council and TBPA. Only once this has occurred can a lease between Council and NBN be finalised.

In order to relinquish relevant land, it is necessary for Council and TBPA to execute a Deed of Partial Surrender, specific to the land in question. This instrument will ensure the remaining terms and conditions of the existing lease between Council and TBPA are unaffected.

The TBPA have indicated that before surrender the land by executing a Deed of Partial Surrender, they require an assurance that Council will make good on its 'in principle' intention to allocate monies from the NBN.

Memorandum of Understanding (MOU)

If Council wish to confirm its 'in principle' support, the most effective means of doing this would be by way of a Memorandum of Understanding in relation to the payments. A Memorandum of Understanding can incorporate a range of duties and obligations in relation to how the money can be used and will ensure that the money is used in a way that ensures improved community outcomes.

Alternative Option – Grant Funding

TBPA have confirmed that they intend to utilise the revenue from the lease to further develop and enhance the Thompson Beach Community Facility, commonly known as "The Shed". The planned improvements to The Shed have been estimated to be in the vicinity of \$60,000 to \$70,000 and would lead to enabling the TBPA to upgrade the facility, conduct more events, broaden their membership base and increase community participation.

An alternative option that Council may consider, is facilitating or providing grant funding to enable TBPA to carry out their intended improvements. If agreed, this arrangement would see Council manage the rental income derived from the lease between Council and NBN. It is possible that the net present value of capital funding to improve its facilities will be more attractive to TBPA than the delayed investment that would result from receipt of rental money.

Licence - NBN

In addition to the issues associated with management of the rental monies, it has also become apparent that it would be prudent for Council to manage and put in place a licencing agreement for the duration of the NBN lease. This would then provide NBN with assurance that for the duration of the lease, their vehicles can traverse across the TBPA leased land to access the NBN site and during construction or phases of maintenance to the NBN Base Station it will enable some moderate site

sprawl. Whilst the risk of NBN being prevented from traversing the land occupied by TBPA or the TBPA taking issue with some moderate construction site sprawl are minimal, the opportunity to mitigate such a risk should be utilised at this early stage.

For Council Consideration

Outlined below, are three (3) potential scenarios for consideration:-

Option 1

Council may choose to make no further assurances or representations in relation to forwarding rental income to TBPA at this time.

The current, ongoing resolution provides 'in principle' support. As outlined above, TBPA is uncomfortable with the notion of 'in principle' support and has suggested that it will not move forward on this basis.

Option 2 – Implement MOU for the On Payment of Rent

Council may choose to confirm that it will forward rental monies in relation to the NBN lease to TBPA.

Council would need to clarify the extent and duration that it intends to do so, and instruct the Chief Executive Officer to arrange/execute the following documents:-

- Deed of Partial Surrender;
- Memorandum of Understanding; and
- Consent to Licence and On Payment of Rent agreement (also required to support the NBN Co lease).

Option 3 – One-off funding to enable development of The Shed

Council may consider working with TBPA in relation to grant funding which will enable the development of its facilities.

Conclusion

TBPA have indicated that they are not prepared to surrender the land or vary the lease until Council has provided an assurance in relation to passing on the rental income.

With an ongoing resolution providing *in principle* support to the notion outlined above, it is recommended that Council confirm its position by way of resolution, in order to assist and facilitate Management in negotiations with TBPA to execute a deed of partial surrender. Clarification regarding the extent and duration of Council's position is also required. Conversely, should Council wish to uphold its previous resolution of 'in principle' support, Management will communicate this to TBPA.

References

Legislation

Local Government Act 1999

Council Policies/Plans

Nil

Attachment 1 to Item 21.2

From: Allison Down
Sent: Friday, 17 May 2019 10:59 AM
To: Michael Lewis
Cc: Tom Jones
Subject: Re: Phone call follow up

Thanks Mick.

Even though I'm away, I will be monitoring the matter and coordinating a few things in the background as needed

I will pass your feedback through to Tom Jones, General Manager Infrastructure & Environment as well.

Allison

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On Fri, May 17, 2019 at 10:18 AM +1000, "Michael Lewis" <micklewis.lewis@gmail.com> wrote:

Allison, good talking to you yest, & thank you for this email, which i shared with our C'tee. As usual, you have summed up all the possibilities.

As you've known for sometime, the Thompson Beach Progress Assoc. is uncomfortable with any arrangement where the 30 metre NBN antenna is installed at the immediate rear of our building for posterity, but with tenous on-going conditions regarding our recompense. As we've discussed; we have stated a preparedness to enter into any of several agreements which would be of financial benefit to us and also the APC.

With the NBN target date of Sep '19 looming we feel that we should reach some sort of arrangement, one way or another, sooner rather than later. We were more than happy to have the soil testing done this week, however following discussions among TBPA C'tee members we have decided that there should be no further access until a resolution is reached.

We are always amenable to discussion and we appreciate the efforts you've made to keep lines of communication open.

Always good speaking with you,

Mick Lewis
Secrtry - TBPA

On Thursday, May 16, 2019, Michael Lewis <micklewis.lewis@gmail.com> wrote:

Fabulous, Allison. Thanks.

I'll tack this on to our stated position, either today or tomorrow.

Regards,

Mick

On 5/16/19, Allison Down <ADown@apc.sa.gov.au> wrote:

> Hi Mick,

>

> Thanks for your call earlier today and outlining that the Association still

> holds some reservations regarding the lease to NBN Co.

>

> I need to start by saying thank you for allowing the NBN people to come on
> site and carry out soil testing before the lease has been enabled.
>
> I understand that the Association has some concerns about these initial
> works and that there appears to have been delays associated with
> establishing the lease. As I have mentioned before, this is a rather
> complex leasing arrangement. Before Council can issue a lease to NBN, we
> need the Association to surrender the parcel of land that the NBN wish to
> occupy. The Association has indicated that it will not relinquish the land
> until Council has provided some assurances in relation to finances to
> compensate for the surrender. We understand that the intent of the
> compensation is to enable some development and improvements of the Shed as
> it is a community facility.
>
> The purpose of the upcoming Council report is to attempt to resolve these
> matters. If Council cannot resolve these and the Association determines not
> to surrender the land, Council will be forced to notify NBN Co that it
> cannot effect a lease and that NBN will need to pursue other options. Under
> no circumstances could we permit NBN Co to access and utilize land for which
> they have no lease for. No doubt this would be a disappointing result for
> many, but Council would be obliged to comply with its existing agreements
> and relevant legislation.
>
> I acknowledge that the soil testing is occurring outside of the lease and
> hence why we checked in firstly to see if this was okay. This should not be
> construed as enabling the construction to proceed without a lease though.
>
> I'm very comfortable if you wish to forward this advice to the rest of the
> Association and make it clear that if we are unable to resolve the leasing
> stalemate and unable to effect the lease with the NBN then Council will have
> no alternative than to advise NBN Co that it cannot continue with its plans
> to construct the Network Base Station on the TBPA property.
>
> Naturally, NBN Co are also keen to see the leasing stalemate resolved so
> that they have some assurance that the project will proceed too.
>
> I appreciate that the length of time that it has taken to reach this point
> in the project has seemed like a long wait, however there has been
> considerable activity taking place in the background to prepare and
> negotiate the necessary agreements that will form the legal framework that
> supports the proposed leasing, rental payments and licensing that is
> required to support the Association, Council and NBN Co. These additional
> agreements having now been drafted, are now at a stage where they are ready
> to be finalised and executed and hence the other reason for the report to
> Council is to authorise our CEO to complete the negotiations and execute the
> papers.
>
> I hope this advice is of some assistance.
>
> Regards,
>

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