

3.3 In-confidence Report - Kingscote Wharf

Council Meeting Date 20 April 2017
Author Andrew Boardman
Title Chief Executive Officer
Attachments Nil
File Ref - Records
Hours to compile 15
Strategic Plan Reference

Cost Reduction

- Revenue Generation
- 12.1 Review underutilised reserves / non-usable assets and explore potential to lease, sell, co-develop for commercial or community return
 - 14.2 Package Infrastructure, service opportunities with other Community investment propositions to increase attractiveness for Public Private Partnership (PPP) potential
 - 17.1 Encourage investment opportunities

Stimulus / Service

Purpose To provide Council with a brief on the options to secure the Kingscote Wharf land.

Executive Summary The State Government has made the decision to dispose of the Kingscote Wharf land and went through an expression of interest process in 2016 which resulted in no outcome. The Council made a submission to the State through this process and was advised that, as we had been involved in the process of going to market (through DPTI consultation), we were deemed to have a conflict of interest and an implied competitive advantage and therefore our submission was removed from consideration. During this process Community feedback to Council was around concerns that public access to the key “wet” infrastructure would be removed and that the amenity value to them, the town and visitors could be compromised if a single developer took on the entire property.

DPTI have determined to leave the property on the market and see what interest develops over the next couple of years with the Airport, Golf Course, American River Resort and other development all hopefully stimulating interest and leading to new approaches to Government to purchase.

Council has worked with City of Holdfast Bay recently to promote a joined up approach to marketing the concept of Glenelg City Beach Jetty, a Ferry and Kingscote Wharf development as a single investment proposition. There has been media interest in this and it is anticipated that this will drive individual developer interest in the Wharf land.

There are informal reports of interest being expressed to Government by developers.

If Council are to maintain an active role in this then it would seem that there is little option but for Council to seek to purchase the land from the State and then look to actively seek development partners for some or all of the area. This report proposes that bid for purchase is put to the Minister for Transport as a formal option to purchase with a 12 month settlement date with option to extend for an additional 12 months.

Recommendation

1. That Council approves under the provisions of Section 90 (2) of the Local Government Act 1999 an order be made that the public be excluded from attendance at the meeting, in order to consider, in confidence, a matter on the grounds of Section 90 (3) –
 - (d) commercial information of a confidential nature (not being a trade secret) the disclosure of which—
 - (i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and
 - (ii) would, on balance, be contrary to the public interest;

This matter relates to a commercial negotiation and as such represents matters that are commercial in confidence and should not be divulged in the public realm until such time as the negotiations are completed successfully or alternatively fully rejected and the proposal accepted as abandoned by Council.

2. Council consideration required.
3. That Council approves:
 - a. That all documentation relating to the above matter be kept confidential, pursuant to Section 91 (7) (b) of the said Act.
 - b. Further, that pursuant to Section 91 (9) (a) of the said Act, that part “a” of this resolution shall cease from 30 June 2017.

This matter relates to a commercial negotiation and as such represents matters that are commercial in confidence and should not be divulged in the public realm until such time as the negotiations are completed successfully or alternatively fully rejected and the proposal accepted as abandoned by Council.

Discussion

It is quite apparent in informal discussions with State Government that they are in no particular hurry to dispose of the property and are prepared to simply leave it “on the books” with Savills (their retained agents) until interest rises and someone approaches them with a realistic and substantial offer to purchase.

Interestingly this may require more than a simple offer to purchase as it is unlikely that the Government will allow a simple acquisition process to occur without any promise of future development – it would want to avoid selling to someone who simply then “land-banks” the property and looks to hold then on-sell for a profit at some point in the future. The Government will be keen to avoid any suggestion of criticism and, as can be seen with other major projects carried out recently, they have been very conscious of the need to make sure that development is carried out on the subject land within a reasonable timeframe.

If Council seek to acquire the land now then clearly we do not have a development proposition up our sleeve and therefore it could be argued that the State could suggest that this is not a desirable outcome, however, the purchaser being Council could make a difference as they may then take the view that this is a good outcome as any criticism in the future become directed at Council and not them.

At this point in time it looks like the acquisition of the Old Police Station, Gaol House and grassed land area that incorporates Crown Land and an element of the Wharf area by Bickford’s through an unsolicited bid process is moving ahead so this will start activity in this area which is only going to stimulate others to look at the opportunity.

The land area is on our system as 2.3731ha made up of 10 separate lots. The capital valuation is currently registered as \$2,675,000 and unimproved value as \$2,375,000.

It is clear that an offer to acquire would need to be higher than this number to get the State’s interest.

Given that the “wet” infrastructure comprising Pelican platform, Fisherman’s Jetty, Slip-way, Barge-landing point, Small boats Wharf and Main Wharf are all untitled sea bed but asset nevertheless the State would need to ensure that access is maintained to the asset unless any offer made includes long term licence / lease of these assets into the overall offer. We note that any movement in this area would likely see the barge-landing point and slipway decommissioned (as there is no business case for maintaining these) which would then leave the Pelican platform, Fisherman’s Jetty and Main Wharf only requiring access.

The implications here are that the whole parcel and the “wet” infrastructure could fall under private ownership and therefore public access to one, some or all could in theory be removed – unlikely as this would make the prospective developer very unpopular locally but nevertheless quite possible. If this were to happen then it means that State has a clean “sale” with no requirements for them to put in public access roads and service easements to each of the assets – something that would save them a considerable amount of money. We note that, under normal subdivision requirements, a developer (in this case the State) would be required to put all of this public infrastructure in place to appropriate standards and then this infrastructure would then become the property of the Council – and we would want to ensure that this was done properly!

The need for access roads to each of the assets also presents them and any prospective developer with an issue as notionally they could end up in the wrong place for future development opportunity unless the Developer is really clear right up front what they plan to do and where and work with the State to subdivide and implement. This means that the process would take some time and there is then the interface of this proposed development with Council’s infrastructure etc to also incorporate. Fundamentally it will still cost the State a lot to achieve and in reality unless they put together a deal that sees the Developer pick up these costs on their behalf then they have the potential not to make a lot of profit from the sale of the land once is it all finalised.

So, consideration should also be given to the opportunity to tie the “wet” infrastructure into an ownership deal which would effectively ring fence the entire area and allow the State an easy exit with no political, social or economic complications.

Noting that DPTI would appear to be treating the “wet” infrastructure as a “no-replacement” asset to all intents and purposes – exactly as Council does with its no-replace assets – basic safety only maintenance - then this would suggest that Council could offer to take on the asset under these terms and lease / licence the asset from the State until end of life. This is effectively the situation we have with the Emu Bay Jetty – basically the State determined that they would simply go round and remove these jetties unless Councils took them over – we chose to and have this under full maintenance lease until 2026. The reality if that DPTI have been good to work with in terms of working with us to keep this in a reasonable condition in the past but we suspect this cooperation will be increasingly difficult to maintain due to the financial and internal pressures placed on the Department.

Looking at this from an investment perspective there would be no major investment ever attached to the current wharf structures – they are simply too old and in a condition, and of a design, that makes them unsuitable for safe, commercial use as mooring facilities for modern boats. Any future ferry development here would require investment in a new wharf facility and this then aligned to a landside design for terminal / passenger handling / and other accommodation / retail infrastructure that would be part of the investment package. If done properly it is suggested that public access to these new facilities for recreational purposes be negotiated and over time these then replace the current dilapidated facilities so they can be removed. At this time the asset is really only such for amenity and ambiance with use limited to lightweight private craft, pedestrian traffic and casual users for fishing and other recreational activities. It is suggested that this asset has at least 15-20 years of life left in it with this level of usage.

For optimum flexibility in / around development with the land / sea interface it is suggested that Council consider not just leasing the actual asset that sits on the sea-bed but also leases an envelope of sea-bed around the asset perimeter so that there is the opportunity to develop out over the sea-bed in the future with new infrastructure without the need to get into negotiations at that stage with Government. We would still require normal development permissions etc to develop in the sea bed but we would fundamentally have a long term lease over the sea-bed and therefore security of tenure and the ability to sub-lease out to others.

Should Council proceed with this and are successful in securing the option, then we would actively market the Wharf Land as a development opportunity to third party developers that could be conducted solely through acquisition of a parcel or parcels of the land direct from Council or developed in joint venture with Council if that made for a better long term outcome for all. Council would aim to minimise developable footprint sold and use the balance of land under licence / lease to satisfy green space / car parking requirements etc such that we retain the flexibility to manage the remnant land to best effect. This also means that change of land use in future is unlikely to cause further sub-division and fragmenting of the land areas – something that is generally not desirable in an area like this.

In short Council would look to recover the costs of acquisition through a combination of land sale (at a premium) and leasing. Community access, pathways, green space and the essential linkage of the wharf area to the rest of town would be managed by Council as part of this process and this would ensure that we get the outcomes we need.

In terms of legislation that applies to Council undertaking this kind of activity:

Council has the ability to acquire land under Section 190 of the *Local Government Act 1999*

*Division 2—Acquisition of land
190—Acquisition of land by agreement
A council may acquire land by agreement.*

In addition the Council is required to consider prudential requirements for certain activities:

48—Prudential requirements for certain activities

- (aa1) A council must develop and maintain prudential management policies, practices and procedures for the assessment of projects to ensure that the council—
 - (a) acts with due care, diligence and foresight; and*
 - (b) identifies and manages risks associated with a project; and*
 - (c) makes informed decisions; and*
 - (d) is accountable for the use of council and other public resources.**
- (a1) The prudential management policies, practices and procedures developed by the council for the purposes of subsection (aa1) must be consistent with any regulations made for the purposes of this section.*
- (1) Without limiting subsection (aa1), a council must obtain and consider a report that addresses the prudential issues set out in subsection (2) before the council—*
 - (b) engages in any project (whether commercial or otherwise and including through a subsidiary or participation in a joint venture, trust, partnership or other similar body)—
 - (i) where the expected expenditure of the council over the ensuing five years is likely to exceed 20 per cent of the council's average annual operating expenses over the previous five financial years (as shown in the council's financial statements); or*
 - (ii) where the expected capital cost of the project over the ensuing five years is likely to exceed \$4 000 000 (indexed); or*
 - (iii) where the council considers that it is necessary or appropriate.**

At this point in time the expected expenditure will not exceed \$4,000,000 and the activity is for the acquisition of a land asset that can be realised. It is therefore suggested that a prudential report is not required for this acquisition but may be a requirement for any subsequent project that is based around the use of this land other than a simple sale for fee.

If Council determines that a report is required then sub section 2) applies:

- (2) The following are prudential issues for the purposes of subsection (1):
 - (a) the relationship between the project and relevant strategic management plans;*
 - (b) the objectives of the Development Plan in the area where the project is to occur;*
 - (c) the expected contribution of the project to the economic development of the local area, the impact that the project may have on businesses carried on in the proximity and, if appropriate, how the project should be established in a way that ensures fair competition in the market place;*
 - (d) the level of consultation with the local community, including contact with persons who may be affected by the project and the representations that have been made by them, and the means by which the community can influence or contribute to the project or its outcomes;*
 - (e) if the project is intended to produce revenue, revenue projections and potential financial risks;*
 - (f) the recurrent and whole-of-life costs associated with the project including any costs arising out of proposed financial arrangements;*
 - (g) the financial viability of the project, and the short and longer term estimated net effect of the project on the financial position of the council;*
 - (h) any risks associated with the project, and the steps that can be taken to manage, reduce or eliminate those risks (including by the provision of periodic reports to the chief executive officer and to the council);*
 - (i) the most appropriate mechanisms or arrangements for carrying out the project.**
- (2a) The fact that a project is to be undertaken in stages does not limit the operation of subsection (1)(b) in relation to the project as a whole.*
- (3) A report is not required under subsection (1) in relation to—*

- (a) road construction or maintenance; or
- (b) drainage works.
- (4) A report under subsection (1) must be prepared by a person whom the council reasonably believes to be qualified to address the prudential issues set out in subsection (2).
- (4a) A report under subsection (1) must not be prepared by a person who has an interest in the relevant project (but may be prepared by a person who is an employee of the council).
- (4b) A council must give reasonable consideration to a report under subsection (1) (and must not delegate the requirement to do so under this subsection).
- (5) A report under subsection (1) must be available for public inspection at the principal office of the council once the council has made a decision on the relevant project (and may be available at an earlier time unless the council orders that the report be kept confidential until that time).

To this end it is suggested that Council consider putting a formal offer to the Minister for an option to acquire the following:

Kingscote Wharf Area comprising Lot 2 Kingscote Tce (comprising titles CT5782/497, CT5374/799, CT5421/441, CT5421/440, CT5421/442, CT5421/446, CT5421/447, CT5421/447, CT5832/212, CT5832/211)

Note: part of CT5782/497 is proposed to be excised and sold to Bickford's as part of their deal with the Crown over CR5241/498

This leaves Lot 2 with an estimated land area of +/- 21,899sqm. Council will acquire this land under fee simple Crown Title with the determination that it not be classified as Community Land under provisions of Section 193 *Local Government Act 1999*.





And

99-Year Lease over sea-bed of an area circa 100,000sqm encompassing all current in water fixed infrastructure for an annual lease fee of \$1.00 on demand with all in water asset taken into Council-ownership in current condition and classified by Council as no-replacement assets



The Option to Acquire is for valid for 12 months and for the total single consideration of **\$3,500,000**.

A bank guarantee will be provided as a non-returnable deposit to the value of \$100,000 (2.9%) to secure the Option.

We should negotiate the Offer as being conditional upon:

- 1) State taking responsibility for all costs of title transfer, survey and lease creation.
- 2) State ensuring that all current lease-holding arrangements are terminated at settlement and any conditions applying to such leases for the removal of lessee-owned infrastructure are actioned and complete with no detriment to residual asset.
- 3) Transaction completing on 1 July 2018 so as to avoid payment of Stamp Duty
- 4) Council taking responsibility for all own costs incurred in transaction process.
- 5) Conditions associated with the lease of sea-bed being acceptable.
- 6) Transfer of ownership of all built-form marine asset to Council without condition
- 7) The Option being able to be extended for a further 12 months (to 1 July 2019) with an additional non-returnable deposit of \$100,000 (2.9%) to secure the option. Full and final settlement must then occur on 1 July 2019 with the balance of \$3,300,000 be paid in full.

Council make this offer to the State to secure an involvement in the future of this land and marine asset on behalf of its Community and effectively indemnify the State from any further responsibility for costs associated with future sub-division, public road access, provision of services to existing or new lots within the land area and maintenance of any marine infrastructure other than that which has to remain property of the State (navigation aids, prescribed lighting or the like as required).

Council make this offer with the understanding that:

- 1) Crown Title will be granted in fee simple and that the land not be classified as Community Land under provisions of Section 193 *Local Government Act 1999*
- 2) An assessment of land-based asset is undertaken by Council prior to classification of the asset for the purposes of population of Council's fixed asset register with asset either taken on as normal asset or else classified as asset type "no-replacement". Asset will be either insured for replacement value or, in the case of a "no-replacement" asset classification, for demolition and removal only.
- 3) All marine infrastructure is taken on and classified as asset type "no-replacement" and will not be depreciable. Infrastructure thus classified will be maintained to meet basic safety requirements appropriate for proposed use only. Where this is no longer possible to maintain then asset will be quarantined from public access / liability or removed.
- 4) Council will continue to explore commercial development opportunities for the wharf land and seabed with third party developers and do not preclude the sale of select land parcels and sub-lease of seabed to third parties for appropriate purposes. It is envisaged that Council retain ownership of all open space, car parking, roads, paths and associated public infrastructure and manage these and their application to developments through appropriate lease / licence / permit processes available.

These steps ensure that there is minimal impact from this acquisition on our balance sheet, insurance and depreciation provisions which effectively minimises the operating impacts on our long term financial performance.

It is understood that this is an unusual step for Council to take but it would seem unavoidable if Council is to retain any form of influence / control over the type of development that could occur and its impact on Kingscote, the Community and our future.

If Council are minded to proceed with this proposal then it is suggested that the following resolutions be considered:

That Council:

- 1) Authorise the Mayor and CEO to take appropriate legal advice with regards to the acquisition of the majority of Lot 2 Kingscote Tce (noting some may be in process of excision and sale to Bickford's) and a long term lease over a portion of seabed (to be determined) and then
- 2) Proceed to approach the State Government with a formal request for option to purchase said land and a suitable lease over a portion of the seabed for the total sum of \$3,500,000 (and an annual lease fee of \$1.00). The option is valid for 12 months requiring settlement by 1 July 2018 and this option is secured with a non-returnable deposit of \$100,000. An additional option period of 12 months may be acquired through the payment of an additional \$100,000 non-returnable deposit with full and final payment then deferred to 1 July 2019.
- 3) Accept that negotiation will be required on conditions as follows:
 - a) State taking responsibility for all costs of title transfer, survey and lease creation.
 - b) State will ensure that all current lease-holding arrangements are terminated at settlement and any conditions applying to such leases for the removal of lessee-owned infrastructure are actioned and complete with no detriment to residual asset.
 - c) Review of conditions precedent on the lease of sea-bed
 - d) Transfer of ownership of all built-form marine asset to Council without condition
- 4) Resolve that this report and any resolution made by Council with respect to this proposal be kept in confidence as a transaction that is commercial in confidence in nature until such time as the Minister responds either accepting or refusing the offer.

For Council consideration.

Governance Considerations

(relates to consistent management, cohesive policies, guidance, processes and decision-rights for a given area of responsibility)

Council need to consider this matter to ensure that Community and Council interests are maintained with respect to the way this land may get sold and developed. There is a risk that Council could effectively become a spectator to development in this area if the land parcel is sold to a third party and then developed under State Coordinator General or State Major Project Status. There are no guarantees under such processes that public access and interests in the wharf area would be maintained by the developer or insisted upon by Government. Council taking ownership of the land asset and control over the seabed does allow Council to play a leading role in facilitating and managing future development here to best effect.

Risk Management Considerations

(identification, assessment, and prioritization of risks (defined as the effect of uncertainty on objectives, whether positive or negative) followed by coordinated and economical application of resources to minimize, monitor, and control the probability and/or impact of unfortunate events or to maximize the realization of opportunities)

The risk exists that this land could be purchased from the state with little or no ability of Council to influence development outcomes and Community access etc to infrastructure. Taking the step to acquire the land does have some financial risks associated with it if development interest fails to materialise, however, is something that can be mitigated both politically and practically in the future.

Economic Considerations

(Assessment of likely financial implications of pursuing a course of action)

The acquisition of this land is an unplanned financial transaction that will need to be funded by sale of some of the land in the future for development. Council need not hold the entire parcel and it is proposed that sale(s) will fund both the purchase and any subsequent infrastructure improvements that are required as part of a sub-division process. Councils return on investment in its most basic form will be in two parts – increased rates and the ability to influence and ensure that our Community have access into / through this area for the future and that any development is complementary to the overall development of Kingscote town centre.

Social Considerations

(Assessment of likely impacts with the Community)

During the expression of interest process, Community expressed their concerns that access etc to the wharf infrastructure could be compromised by sale of the lot to a single developer. Council acquiring the land and then managing subsequent sale and development will ensure that Community access to existing and future public infrastructure is maintained in an appropriate manner whilst ensuring that any development has the opportunity to be secure and profitable. It is believed that the Community will support this initiative in the long term.

Environmental Considerations

(Assessment of likely impacts on the environment)

Nil at this time.