

IN-CONFIDENCE REPORT – 27 NOVEMBER 2013 SPECIAL COUNCIL MEETING

Item No	3.5
Report Title	American River
Council Meeting Date	27 November 2013
Author	Andrew Boardman
Title	Chief Executive Officer
Attachments	nil
File Ref - Records	
Hours to compile	10.5
Strategic Plan Reference	1.3 – to provide good governance that is transparent, equitable and accountable. 4.10 – Manage & maintain Community Land and other Council land in accordance with best practice.
Purpose	To brief Elected Members on land ownership options in American River Foreshore for two enterprises.
Executive Summary	Both American River Shellfish and the Rebuild Independence Group (RIG) are looking to secure long term leases over pieces of Foreshore in American River that are currently under a “trust” arrangement and managed by DPTI. This “trust” arrangement precludes the issue of a long term lease and there have been negotiations between DPTI and DEWNR for a rededication of the land such that DEWNR would have care and control. This would then allow them to issue a long-term lease. It is DEWNR’s position that it is prepared to do this but believes that it is far more appropriate for Council to have care and control and issue the leases as Council has the remainder of the land either side of the two parcels held as coastal recreational reserve and that the land represents no environmental value and is in the town centre zoned area. A potential contamination issue has been identified and that has caused concern for Council in this respect. This matter has now been resolved.
Recommendation	That Council <ol style="list-style-type: none">1) Direct the CEO to confirm with DPTI the intent to accept rededication of Sections 271 and 357 on plan H1105005 at American River into Council care and control.2) Once dedication is complete, Council then enter into lease negotiation arrangements with the two interested parties – American River Shellfish and the Rebuild Independence Group

Discussion

Council passed the following resolution at the 10 April 2013 Meeting of Council

Item No 17.5

Report Title American River Progress Association – Boundaries

Moved Cr Denholm

Seconded Cr Clements

That Council administration considers and recommends to Council at its earliest, the processes required to enable Project Independence to obtain a secure and long term lease for an operational base within the desired waterfront area DTEI land H110500 5271.

CARRIED.

Since this time the CEO has been in various discussions with DEWNR / DPTI and others with regards to the issues around land ownership / control of this parcel of land (Section 357) and also has become aware of the negotiations around the other parcel of land (Section 271) to the north of this area currently occupied by the American River Shellfish.

The main issue to overcome was the report that there had been contamination found in this area (Section 357) and the CEO had advised Council that no commitment to take over the land should be made until the full extent and implications of this contamination was understood and clarified such that no latent risk to Council would exist should we take over the land.

This has been a protracted process and has now been resolved to the point where Council may consider agreeing to the land moving from care and control of DPTI to that of Council. Council will then be able to issue a suitable lease to the Rebuild Independence Group (RIG) for the development of the shed that will be the centre of their project.

The full contamination report has been made available to Council and the conclusions are as follows:

- 1) Fill materials did not contain foreign inclusions
- 2) pH values of two samples analysed exceeded the ecological range (from fill and bore) but it was considered that these pH values are representative of background levels and not affect the assumed future commercial use of the site.
- 3) Sulphate and phosphate concentrations of the fill and natural soil were elevated in the vicinity of the old superphosphate storage shed. The elevated sulphate concentrations may have a corrosive effect on building structures.
- 4) No groundwater assessment was carried out and no shallow groundwater was detected during the course of the investigations
- 5) Concentrations of nitrate, nitrite, total nitrogen, TKN and ammonia varied across the samples. The highest concentration of Total nitrogen and TKN were found in the surface fill located adjacent to the former public amenities, but are likely reflective of background. In the absence of nitrate, ammonia and E.coli, these elevated concentrations are unlikely to affect the on-going commercial / industrial use of the site.

Note:

TKN (Total Kjeldahl Nitrogen) is the total concentration of organic nitrogen and ammonia.

Based on the soil investigation undertaken, the concentrations of chemical substances obtained do not preclude an ongoing commercial / industrial land use. However, the design of any structures built in the vicinity of the former superphosphate shed should take into account the elevated sulphate concentrations due to the increased corrosion potential.

In addition to this advice from Parsons Brinckerhoff Australia Pty Ltd, advice from the State Environmental Protection Agency (EPA) was also taken and they had the following comment to make:

From: McGill, Dale (EPA)
Sent: Thursday, 17 October, 2013 9:29 AM
To: Wareing, Mark (DEWNR)
Subject: RE: Assessment of Soil Investigation report for American River Wharf

Hello Mark,

Sensitive land use is defined in the Environment Protection Act 1993 as (from Section 3):

- (a) use for residential purposes; or*
- (b) use for a pre-school within the meaning of the Development Regulations 1993; or*
- (c) use for a primary school; or*
- (d) use of a kind prescribed by regulation;*

The phrase in my last email where if the land use was changing to a more sensitive use (one of the above), further assessment may be required for the site.

The land use at the wharf appears to have been largely commercial / industrial in the past and it seems that there is no proposed change from commercial / industrial use. A cafe, is still considered to be commercial / industrial land use and therefore the conclusions of the consultant, that "Based on the soil investigation undertaken, the concentrations of chemical substances obtained do not preclude an ongoing commercial / industrial land use. However, the design of any structures built in the vicinity of the former superphosphate shed should take into account the elevated sulphate concentrations due to the increased corrosion potential". The consultant has indicated that the site is suitable for ongoing commercial / industrial use.

Let me know if you need any further clarification.

Regards,
Dale McGill
Adviser, Site Contamination
Phone (08) 8204 9491 Fax (08) 8204 1890
[Environment Protection Authority](#)
GPO Box 2607, Adelaide, S.A. 5001, AUSTRALIA

To this end it would seem that there is no issue other than building material specification to resist the increased potential for corrosion that needs to be considered.

It should be noted that site samples taken to the north of the Section (where the American River Shellfish Buildings sit) showed no signs of contaminants at all.

To this end the route would appear to be open for Council to accept the dedication of the land from DPTI to Council, with Council then putting together suitable lease documents between them and interested parties for the land.

Given that this is the case it would seem to be reasonable that Council consider taking over both of these Sections – 271 (American River Shellfish) and 357 (RIG land) and then entering into long-term leases with both parties.

The plan following indicates the extent of the boundaries of each of the land parcels.

It should be noted that DPTI propose to survey and mark the entire area of these two Sections and then create a right of way across the southern boundary of Section 271 which will give them access rights to the seabed lying to the east which is the current wharf facility. It is believed that they will go through the process of converting the seabed to land title formally.



Further discussion with DPTI has resulted in the following points being raised:

- There is no “asset transfer” cost to Council arising from the Dedication
- Council can enter directly into a long term lease with American River Shellfish under its LG Act powers as it chooses and derive any rental from the lease
- Council can set conditions as it chooses and manage the American River Shellfish lease as a “local issue” as it sees fit - including supporting or terminating the lease by factoring in local knowledge and objectives
- Council can make decisions at American River that incorporate and balance its objectives in supporting the Rebuild Independence Group Community Project with the American River Shellfish operations
- Council already controls all coastal land adjoin the current “Trusted” parcel. Accepting Dedication of the American River Shellfish lease land will give Council effective control of all the land around the American River Port - apart from the access road to the Wharf that our Minister will hold in title. This will allow Council to use its rights under the Dedication to simplify processes for planning and implementation of any upgrading at American River area that it proposes in future. Note: all the associated Development consultation with DPTI, DEWNR etc will still be required - but the overall process becomes simplified.



Plan 2 - S271 & reclaimed seabed

0 5 10 20 30 40 50 Metres

Government of South Australia
 Department of Planning,
 Transport and Infrastructure
TRANSPORT PROPERTY



AMERICAN RIVER

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To this end it is recommended that Council direct the CEO to confirm with DPTI the intent to accept rededication of the land into Council care and control so that Council may then enter into lease arrangements with the two interested parties – American River Shellfish and the Rebuild Independence Group.

It should be noted that DPTI are flagging the need for these discussions to be kept **highly confidential** so that there be no further issue between DPTI / DEWNR and DPTI / DEWNR / American River Shellfish.

Governance Considerations

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

Need to ensure that land dedication processes are completed in accordance with best practice.

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 time taken to ensure that there is no latent risk from the potential contamination of the land has proven to be valuable. The risk assessed by both Expert Consultants and EPA is that the land is suitable for its planned usage (commercial / industrial) and that there is a need to manage building material selection only to mitigate the possibilities of increased risk of corrosion. This will be an issue for the leaseholders. Lease documents will ensure that built asset remains the property of the lessee. This will also mitigate any additional asset coming onto the Council's Balance Sheet.

Economic Considerations

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

This will be a no-cost operation for Council up until the point where lease establishment commences. The areas will be surveyed and marked by DPTI and the dedication process will be managed by them. The potential exists for Council to derive lease revenue from both land areas.

Security of lease is a major requirement for investment for both RIG and American River Shellfish and with this investment comes the opportunity for employment and economic growth – both important opportunities for the American River Community.

Social Considerations

(Assessment of likely impacts with the Community)

Security of lease is a major requirement for investment for both RIG and American River Shellfish and with this investment comes the opportunity for employment and economic growth – both important for the American River Community.

Environmental Considerations

(Assessment of likely impacts on the environment)

Nil at this time.