

1.2 Proposed Land Exchange – Encroachment – 10 Carnarvon Avenue, Jan Juc (Jan Juc Creek Reserve)

EMT Report

Council Briefing

Council Report

Meeting Date:

Tuesday, 12 May 2015

Council Meeting Adoption Date:

Tuesday, 12 May 2015

Author's Title: Property Officer

Department: Contracts & Capital Works

Division: Governance & Infrastructure

Appendix:

1. Submitters who have registered to speak

Officer Direct or Indirect Conflict of Interest:

In accordance with Local Government Act 1989 – Section 80C:

Yes

No

Reason: Nil

General Manager: Sunil Bhalla

File No: F14/1703

Trim No: D15/19920

Status:

Information classified confidential under Section 77 of the Local Government Act:

Yes

No

Reason: Nil

Purpose

To hear submitters following invitation of submissions in accordance with Section 223 of the Local Government Act 1989 in relation to the proposed land exchange with the RACV located at 10 Carnarvon Avenue, Jan Juc.

Summary

This proposed exchange is to rectify a historic encroachment of Torquay Golf Club assets on Council Land.

Council advertised its proposal to exchange Council Land, and invited submissions in accordance with Section 223 of the Local Government Act. At the closing time of 3pm Thursday 9 April 2015, two submissions were received with two submitters indicating that they wish to be heard in support of their written submission.

Recommendation

That Council receive and note the submissions for the proposed land exchange with RACV.

Council Resolution

MOVED Cr. David Bell, Seconded Cr. Heather Wellington

That Council receive and note the submissions for the proposed land exchange with RACV.

CARRIED 6:0

Close of Meeting: There being no further items of business, the meeting closed at 4:23pm.

Proposed Land Exchange – Encroachment – 10 Carnarvon Avenue, Jan Juc (Jan Juc Creek Reserve)

Report

Background

Council at its Ordinary Meeting on 28 October 2014 supported the commencement of the process to undertake a land exchange with the Royal Automobile Club of Victoria (RACV) to rectify a long term encroachment onto Council land. The encroachment consists of a water storage dam and water pumping assets on Council's reserve known as Jan Juc Creek Reserve.

Council at its Ordinary Meeting on 27 January 2015 resolved to advertise the proposal in accordance with Section 223 of the Local Government Act.

Council initially advertised for 892.5m² to be exchanged with the RACV, however after the advertisement was placed on Thursday 19 February 2015 an opportunity was identified to reduce the size of the land required to remedy the encroachment. Council now proposes to exchange only 510.1m² and accordingly re-advertised its revised proposal on Thursday 12 March 2015 for a further 28 days. Submissions closed on Thursday 9 April 2015 at 3pm.

Discussion

The two submissions received are against the proposal and can be summarised as follows and are attached for consideration:

- There are no benefits to the community from the proposal;
- RACV should bear all costs regarding the transfer and pay an additional benefit cost to Surf Coast Shire;
- Questions have been raised regarding the ownership of the Jan Juc Creek and if any part of the creek will be transferred into the ownership of RACV;
- Maintenance of the creek will be difficult with the current proposal;
- Concerns regarding the method of valuation for the land.

Council will consider the proposal at a future Ordinary Council Meeting.

Financial Implications

RACV will pay the following costs:

- Legal;
- Surveyor;
- Valuation;
- Advertisement.

The re-valuation and re-advertisement costs will be paid by Council as the amendments to the initial proposal were instigated by Council.

Council Plan/Policy/Legal Implications

The proposal is in accordance with Section 189(2) of the Local Government Act 1989 and Section 223 of the Local Government Act and the Local Government Best Practice Guidelines for the Sale, Exchange or Transfer of Land.

The proposal also meets the requirements of Section 20(2) of the Subdivision Act which requires Councils to use the proceeds from the sale of any public open space to:

- buy land for use for public recreation or public resort, as parklands or for similar purposes; or
- improve land already set aside, zoned or reserved (by the Council, the Crown, a planning scheme or otherwise) for use for public recreation or public resort, as parklands or for similar purposes; or
- with the approval of the Minister administering the Local Government Act 1989, improve land (whether set aside on a plan or not) used for public recreation or public resort, as parklands or for similar purposes.

It should be noted that under section 20(4) of the Subdivision Act, public open space can only be sold if the Council has provided for replacement public open space.

Proposed Land Exchange – Encroachment – 10 Carnarvon Avenue, Jan Juc (Jan Juc Creek Reserve)

Officer Direct or Indirect Interest

No officer involved in the preparation of this report has any conflicts of interest.

Risk Assessment

There may be some members of the local community who would not support the exchange.

Social Considerations

There are no social considerations associated with this report.

Community Engagement

Council advertised its proposal in accordance with Section 223 of the Local Government Act 1989.

Environmental Implications

The RACV dam (the encroachment) is part of the system of diversion of urban storm water away from the creek and onto the golf course and is considered to provide a net benefit to the creek's health.

Communication

As listed under Community Engagement.

Conclusion

It is recommended that Council receive and note the submissions relating to the proposed land exchange with RACV.

APPENDIX 1: SUBMITTERS WHO HAVE REGISTERED TO SPEAK

REGISTERED SPEAKERS

1. Greg Sharpley
2. Sid Pope on behalf of 3228 Residents Association Inc.

Councillors and Peter

My apologies for forwarding this to you directly but I did not obtain a copy of the ad from the local paper, the web site does not provide an email address and the advertisement on the council web site is still for the old proposal involving three sections of land.

Could you please forward this onto the relevant person[s]

Dear Sir/Madam.

I object to the current proposal to exchange the proposed land with the RACV for the following reasons:

1. There is no benefit to the Shire or the community. The benefits only accrue to the RACV because they can forego the expense of having to relocate their dam from public land. A cost which I guesstimate to be in the tens of thousands of dollars.
2. The transfer does not provide the SCS "benefit through ensuring the integrity of parkland is maintained" That phrase has no meaning in this context.
3. The contribution of "up to \$10 000" is similarly meaningless. The RACV could contribute \$1 and achieve that.
4. The cost to the shire will be well in excess of \$10 000. Consider - The cost of advertising in the paper [twice], the time cost of officers reviewing and responding to the submissions, officers time in preparing the web advertisement on the SCS web site, attending meetings with RACV and community, the cost of the meeting for the council to consider the submissions, including the meal costs, legal costs, survey costs and possibly the cost of attendance at VCAT if the community decide to challenge the decision of the council, etc.
5. IF the land is to be exchanged then the RACV should bear all costs and then pay an additional 'benefit cost' to the SCS. That is the requirement of the Victorian code which the SCS adopted some years ago and failed to follow in relation to the recent sale of the land in Torquay Bvd.
6. Under the revised exchange proposal the SCS now appears to be exchanging land which still includes the creek [in the vicinity of the pump station]. As raised at the recent meeting with the RACV, the Jan Juc Creek is a declared waterway and therefore not owned by the SCS. SRW advised at the meeting that they can allow access across public land for the intake structure under the water act. Therefore the Shire does not have to transfer the ownership of any land for this purpose.
7. The RACV originally proposed to provide public access along their dam bank on the northern side of the creek. A matter which they now dispute. The exchange of the land as currently proposed would stop access along the northern side of the creek, as it is proposed to give the RACV ownership of the banks of the creek. This was confirmed at the recent meeting by the RACV representatives. Again I believe that under the Water act the state government owns the creek up to the top of the banks of the creek. The SCS needs to get this aspect confirmed legally. Yet another potential cost to the rate payers for the benefit of the RACV.
8. The revised boundary of the RACV must be such that there is no encroachment onto the Jan Juc Creek including its banks. From a maintenance perspective the outer toe of the RACV dam embankment and boundary fence should be a minimum of 4 metres from the top of the creek bank to enable vehicle access along the north side of the creek for maintenance, in particular for clearing silt and weeds out of the creek and to enable planting to enhance the creek environment. This could also be used to provide a public foot path along the creek to the beach. That would ensure that the integrity of parkland is maintained and enhanced.

In short there is nothing in the current proposal which is of benefit for the SCS or the community, but there is a huge potential saving for the RACV.

I urge the Council to reject both of the current proposals and request to be advised of the date of hearing submissions.

Regards

Greg Sharpley

3228 Residents Association Inc.

Torquay 3228

By Email to info@surfcoast.vic.gov.au
Attention: Sunil Bhalla
Director Infrastructure,
Surf Coast Shire Council

Re: Objection to the currently advertised exchange of land between the RACV and the Surf Coast Shire shown as 10 Carnarvon Avenue Jan Juc

The 3228 Residents Association object to the currently advertised exchange of land at 10 Carnarvon Avenue Jan Juc for the reasons outlined below:

- We are concerned at the lack of transparency around this exchange of public land.
- After reading the information provided in the advertisement and discussions with Brendan Walsh (Acting Director Infrastructure) we can see no benefit to the community in the terms of the exchange.
- We cannot see that the parcel of land that the council will acquire if the exchange proceeds, will be of any use to the community as parkland and believe the advertisement wording "The community will benefit through ensuring the integrity of parkland is maintained and assets improved through a contribution from the RACV of up to \$10,000" deliberately ambiguous. When we queried the ambiguity of the figure we were informed by a council officer that "At this stage the word wording around the 'up to \$10,000' will remain the same. This is consistent with the wording contained in the letter of support for the proposed land exchange provided by the RACV." As the exchange as originally proposed no longer is relevant then the amount of contribution by the RACV should be able to be re-negotiated.
- We are particularly concerned that once again the ratepayers will be the ones paying the costs involved in the exchange, as happened with Torquay Blvde. We are still waiting to hear what "the reasonable costs" were that the purchaser in that exchange paid. I have been informed that because there has been an alteration to the amount of land exchanged that the shire will be paying the extra costs involved. Why did council ask for the alteration?
As this is a negotiation process, why should council accept any costs as this process is solely for the financial benefit of RACV - to allow them not to have to give back land that belongs to the community. This process is simply being suggested to save them money.
- We are concerned that the method of valuation is different to that used for Torquay Blvde even though both parcels of land are considered reserve by the Shire.
- Who owns the creek? One of our members has concerns that the exchange of the land as currently proposed would stop access along the northern side of the creek, as it is proposed to give the RACV ownership of the banks of the creek. This was confirmed at the recent meeting by the RACV representatives. Again I believe that under the Water act the state government owns the creek up to the top of the banks of the creek. The SCS needs to get this aspect confirmed legally. Yet another potential cost to the rate payers for the benefit of the RACV.

Please inform us of the date of the hearing of submissions.

Regards
The Committee of 3228 Residents association Inc.

The areas highlighted red and blue have been independently valued at \$20,000 each. The community will benefit through ensuring the integrity of parkland is maintained and assets improved through **a contribution from the RACV of up to \$10,000.**

As mentioned in our meeting it was Council that initiated this change in the land size to be exchanged. As such Council will be paying the additional costs associated with the alterations. It should be noted that the additional work required by the surveyor was a desktop exercise only – his work was based on previous works completed on this issue a number of years ago. The valuation was also a desktop exercise based on the work already completed. Costs associated with these elements will be very low. There are no additional legal costs associated with the revision of the proposed exchange.

At this stage the wording around the 'up to \$10,000' will remain the same. This is consistent with the wording contained in the letter of support for the proposed land exchange provided by the RACV.

I need to provide you a follow up to our meeting last week regarding the proposed RACV land exchange.

As discussed on site we have identified an opportunity to reduce the parcel of land that needs to be considered as part of the exchange. This parcel is now approximately 510m². The land to be exchanged will now be limited to the parcel identified on Hoylake only and does not need to include anything near the entrance into Jan Juc Surf Club.

With respect to process moving forward we are finalising the surveyors map to show the revised parcels and will be getting valuations on these parcels once that is completed. We will then be publishing a revised public notice and extending the closing date for submissions. Due to advertising deadlines in the Surf Coast Times we expect this to be published on Thursday 12 March.

Any submissions received prior to this change will be valid however we will contact the submitters to make sure they are aware of the amendment to the proposal.

I have also attached an aerial map showing the Crown Land Lease (bone shading), Crown Land Reserves (light green) and Crown Land (dark green) for you information (I remember you asking for this at our meeting – apologies for the delay)

If you have any questions on this please don't hesitate to give me a call.

Who initiated the change in the land size that is proposed to be exchanged?

Will the RACV be paying for the new survey, valuation, advertising and legal costs?

Will the "up to \$10,000" be more clearly defined?

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