



SUPPLEMENTARY BUSINESS PAPER

GENERAL MEETING

Wednesday 13 December 2017
at 6:30PM



TABLE OF CONTENTS

SUPPLEMENTARY ITEMS

Item 24 CS47/17 Proposed Telecommunications Facility at Arcadia	1
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24 PROPOSED TELECOMMUNICATIONS FACILITY AT ARCADIA

EXECUTIVE SUMMARY

- NBN Co. Limited approached Council in August 2015 and later in February 2016 with various proposals to establish a telecommunications facility at Arcadia Park. Council attempted to negotiate a reasonable, market-based agreement to secure the facility at Arcadia Park, however, NBN Co. Limited were not willing to proceed on a financial basis that was acceptable to Council.
- NBN Co. Limited is currently well advanced on a proposal to establish a telecommunications facility within environmentally sensitive land at "Wesley Vision Valley" at Arcadia. Following community consultation, concerns have been raised about the proposed location and representations have been made to Councillors by the community for the facility to be established at an alternative location at Arcadia Park.
- NBN Co. Limited has recently submitted a basic proposal to Council to lease land at Arcadia Park at a rental that is approximately one third of the minimum market rental value for a telecommunications facility. This Report recommends that Council use its best endeavours to negotiate a reasonable agreement with NBN Co. Limited to lease land at Council owned land at Arcadia Park for the purpose of establishing a telecommunications facility.

RECOMMENDATION

THAT Council

1. Use its best endeavours to reach a reasonable agreement with NBN Co. Limited to relocate their proposed telecommunications facility from 7 Vision Valley Road, Arcadia to an appropriate location within Lot 761 DP 1121447, Arcadia Park, Arcadia.
2. Delegate authority to the Acting General Manager to negotiate a reasonable agreement with NBN Co Limited to relocate their proposed telecommunications facility from 7 Vision Valley Road, Arcadia to an appropriate location within Lot 761 DP 1121447, Arcadia Park, Arcadia; in accordance with the recommended lease terms and subject to achieving the minimum annual rental noted in the confidential attachment to Deputy General Manager's Report No. CS47/17.
3. Delegate authority to the Acting General Manager to execute under Power of Attorney any documents deemed appropriate by Council's legal advisors in respect of an agreement to lease land to NBN Co. Limited, for the establishment of a telecommunications facility located within Lot 761 DP 1121447, Arcadia Park, Arcadia.
4. Authorise the use of the Council Seal on any documents deemed appropriate by Council's legal advisors in respect of an agreement to lease land to NBN Co. Limited, for the establishment of a telecommunications facility located within Lot 761 DP 1121447, Arcadia Park, Arcadia.

PURPOSE

The purpose of this Report is to provide Council with information concerning a proposal by NBN Co. to establish a long term telecommunications facility on Council's property at Arcadia. This proposal follows an earlier proposal by NBN Co. to establish the facility on a nearby privately owned property which is located within environmentally sensitive land. The Report has been provided as a Late Item for this Meeting as the subject arose in late November 2017 and there are time constraints associated with a decision.

BACKGROUND

The telecommunications industry continues to be a rapidly growing industry, with the mobile telecommunications sector being, by far, the largest growing part of the industry. A major contributor to this growth has been the introduction of smartphones and the large amount of data that now can be downloaded by these handheld and other wireless devices.

Up until recently, there were three major mobile phone carriers in the market, Telstra, Optus and Vodafone, and each have more recently embarked on major expansion of their networks. In April 2017, TPG unveiled plans to build a \$2 billion mobile network to become the fourth mobile phone operator in Australia.

Predominantly, these carriers engage consultants to act on their behalf to acquire more and more telecommunication sites to expand and enhance their network coverage. Local councils and the Crown are experiencing vastly increased levels of initial enquiry from these consultants, as the most sought after source of sites for telecommunications facilities.

Hornsby Shire Council staff have experienced this high level of initial enquiry in recent years, with only a small percentage of these enquiries actually leading to the establishment of a facility, due to the "scattergun" approach adopted by most of the consultants.

In respect of this particular matter, Council records show that:

- In August 2015, a property consultant representing NBN Co ("the consultant"), approached Council with a number of options for establishing a telecommunications facility on Council's properties at Lot 761 DP 1121447, known as Arcadia Park at 127X Arcadia Road Arcadia, as well as Fagan Park, Galston and Glenorie Park, Glenorie.
- On 23 February 2016, following no other correspondence, the consultant re-established contact with Council, seeking "*to investigate the possibility of installing*" a telecommunications facility at Arcadia Park, close to the RFS station.
- On 26 February 2016, following investigations by Council staff from the Natural Resources, Parks and Recreation and Land and Property Services Branches, an email was sent to the consultant stating that Council "*would be pleased to accommodate*" their proposal for new NBN facilities as a "co-located" facility on the existing Telstra monopole at Arcadia Park. The consultant was requested to complete Council's application form to formally commence the process.
- On 26 February 2016, following receipt of the above email, the consultant contacted the Land and Property Services Branch to establish agreement with Council on the amount of rental to be paid to Council, before he spent any more time or money on the subject proposal. The consultant offered a small amount of rental per annum, that represented one sixth of the lowest rental amount that Council could accept as a fair payment (based on market evidence).

- Ultimately, the consultant did not make the application and no further correspondence was entered into.

A process of community consultation by NBN Co. commenced in November this year, in respect of its telecommunications facility proposed to be established within “Wesley Vision Valley” at 7 Vision Valley Road, Arcadia. Following the initial and subsequent community consultation, significant community opposition has been raised to the proposed location at “Wesley Vision Valley”. Correspondence received by NBN Co. and some Councillors has indicated that the community saw an alternative location near Arcadia RFS to be more suitable.

As a result of this community opposition, a meeting was held on 30 November 2017 between Council staff, a Councillor representative and NBN Co. Discussion was centred on available options and a positive way forward that dealt with the concerns of NBN Co, Council and the community. NBN Co. representatives indicated that the process for their proposed facility for “Wesley Vision Valley” was well advanced and that time constraints represented quite an impediment to a change in location.

NBN Co. subsequently held an additional community consultation on 6 December 2017, where it is reported that the community confirmed their wish for the proposal to be relocated from “Wesley Vision Valley” to the Arcadia Park site. Having regard to time constraints and Council’s desire to use its best endeavours to adequately address the concerns of NBN Co. and the community, this Report has been added to this Meeting agenda to allow Council to consider whether to provide the Acting General Manager with delegation of authority to progress consideration of the alternative site as quickly as possible.

DISCUSSION

The market for telecommunications facilities and sites is less straightforward and less transparent than other more typical classes of real estate. Owners generally have a lesser understanding of the value and use of telecommunications sites, and with a limited availability of open market evidence, owners also have limited knowledge of site rentals. A key determinant to a site rental is the knowledge and negotiating stance of the owner. Invariably, higher site rentals are achieved when owners have a firm understanding of value and where they are prepared to ‘walk away’ if the Carrier is not prepared to pay what the owner perceives to be a market rent.

The value for site rents appears to have plateaued in recent years with some evidence emerging of Carriers pushing hard to reduce costs wherever possible. As a consequence, there is conflicting evidence where relatively ‘high’ rents continue to be paid and where ‘low’ rents are being negotiated with owners who may be willing to simply accept ‘additional’ rental income for their property. The confidential attachment to this Report contains comparable market evidence. It is considered to be ‘commercial-in-confidence’.

NBN Co. Proposal

On 5 December 2017, NBN Co. submitted a proposal to Council for lease of land at Arcadia Park. The “Heads of Terms” provided in the NBN Co. proposal simply sought to build, maintain and operate a telecommunications facility at a “gross” rental that was higher than their earlier offers to Council, but which represents approximately one third of the minimum market rental value for any telecommunications facility and nearly one fifth of the value for a significant facility. The NBN Co. offer is also well below the available evidence of other agreements that NBN Co have settled in country NSW.

Triple Bottom Line

It is common for Council to consider the Triple Bottom Line factors of financial, social and environmental issues. Often, this consideration provides the Council with scope to offset market value or best value financial consideration, to account for the social and environmental benefits to be derived from any agreement. Having regard to the strong community opposition to the "Wesley Vision Valley" site and the potential impact on the environmentally sensitive land, there are conceivably strong arguments to discount the market rental on social and environmental grounds.

BUDGET

This proposal from NBN Co. provides the potential for unbudgeted income to be achieved by Council.

POLICY

There are no policy implications associated with this Report.

CONCLUSION

Having regard to the unique circumstances of this matter, the concerns of the community and the protection of the environment, it is considered appropriate and prudent that Council delegate authority to the Acting General Manager to use his best endeavours to negotiate a reasonable agreement, based upon Triple Bottom Line principles, to relocate the proposed establishment of a telecommunications facility from a private property to Council owned property at Arcadia Park.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Manager, Land and Property Services – Mr Peter Thompson - who can be contacted on 9847-6669.

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Attachments:

- [1.View](#) Market Evidence and Negotiation Parameters - *This attachment should be dealt with in confidential session, under Section 10A (2) (d) of the Local Government Act, 1993. This report contains commercial information of a confidential nature that would, if disclosed (i) prejudice the commercial position of the person who supplied it; or (ii) confer a commercial advantage on a competitor of the council; or (iii) reveal a trade secret.*

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