

REPLACEMENT REPORT

REPORTS FROM THE DIRECTOR SUSTAINABLE COMMUNITIES AND ENVIRONMENT

17 [SCE-CM] Proposed Licence to Pottsville and District Men's Shed Inc of part Lot 301 on DP 1125090, Overall Drive, Pottsville known as Black Rocks Sports Field

SUBMITTED BY: Design

mhm



Behind the scenes
Providing support to make it happen

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

4	Behind the scenes
4.1	Assurance
4.1.3	Legal Services - To support and advise staff on organisational legal issues and property management of Council controlled assets

ROLE: Collaborator

SUMMARY OF REPORT:

At its meeting on 16 May 2019, Council resolved to:

- “1. In accordance with section 46 and 47 of the Local Government act 1993 and the Tweed Shire Council Generic Plan of Management for Community Land Categorised as a Sportsground, and Crown Land used as a Sportsground, May 2012 (“Plan of Management”):
 - (i) Publicly notify and exhibit the proposal to grant to Pottsville and District Men’s Shed Inc. (“Men’s Shed”) a licence of land, being the land to which the Licence Agreements between the Council and the Men’s Shed dated 30 March 2017 applies, for a period of 5 years commencing on 30 March 2022 with an option to renew for a further period of 5 years exercisable by the licensee (“Licence”);
 - (ii) Before granting the Licence, consider a further report concerning public submissions received in relation to the public notification of the proposal and further consider whether the Minister’s consent is required in order to grant the Licence.”

Council publicly notified and exhibited the proposed Licence from 4 June 2019 until 23 July 2019.

Council received 777 submissions from 849 signatories in response to the public notification and exhibition. 765 of the 777 submissions received were in support of the proposed Licence, and 12 submissions were opposed to the proposed Licence.

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Council also received a response from the Biodiversity and Conservation Division of the Environment, Energy and Science (“EES”) Group which forms part of the Department of Planning, Industry and Environment, formerly the NSW Office of Environment and Heritage.

The EES response did not support or oppose the grant, but recommended that, prior to granting the Licence, Council should satisfy itself that various aspects have been considered.

Officers have considered the submissions received from the public, as well as the response received from the EES, and now recommend that Council, pending approval from the Minister, resolve to grant the Licence for the following reasons:

1. There was overwhelming public support in favour of granting the Licence (i.e. 837 signatories in support, versus 12 signatories against);
2. The Men’s Shed provides a valuable community service that assists the physical and mental health and wellbeing of a wide range of community members; and
3. Council is satisfied that the grant of the Licence is consistent with all applicable environmental legislation.

Section 47(5)(a) of the *Local Government Act 1993* (NSW) states that, if a person makes a submission by way of objection to a proposal to grant a licence, Council must not grant the licence except with the Minister’s consent.

RECOMMENDATION:

That:

1. **Council applies to the Minister seeking consent to grant a Licence to the Pottsville and District Men's Shed of part Lot 301 DP 1125090, Overall Drive Pottsville, for a period of 5 years commencing on 30 March 2022 with an option to renew for a further period of 5 years;**
2. **If the Minister consents to the grant of the Licence, Council grants the Licence; and**
3. **If the Minister consents to the grant of the Licence, Council authorises the Mayor and the General Manager to have the Council seal affixed to the Licence.**
4. **ATTACHMENTS 3 and 4 are CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-**
 - (e) information that would, if disclosed, prejudice the maintenance of law.

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REPORT:

At its meeting on 16 May 2019, Council resolved to:

- “1. *In accordance with section 46 and 47 of the Local Government Act 1993 and the Tweed Shire Council Generic Plan of Management for Community Land Categorised as a Sportsground, and Crown Land used as a Sportsground, May 2012 (“Plan of Management”):*
 - i) *Publicly notify and exhibit the proposal to grant to Pottsville and District Men’s Shed Inc. (“Men’s Shed”) a licence of land, being the land to which the Licence Agreements between the Council and the Men’s Shed dated 30 March 2017 applies, for a period of 5 years commencing on 30 March 2022 with an option to renew for a further period of 5 years exercisable by the licensee (“Licence”);*
 - ii) *Before granting the Licence, consider a further report concerning public submissions received in relation to the public notification of the proposal and further consider whether the Minister’s consent is required in order to grant the Licence.”*

Public notification and exhibition

Section 47(1) of the *Local Government Act 1993* (NSW) (“LG Act”) requires:

“... If a council proposes to grant a lease, licence or other estate in respect of community land for a period (including any period for which the lease, licence or other estate could be renewed by the exercise of an option) exceeding 5 years, it must:

- a) *give public notice of the proposal (including on the council’s website), and*
- b) *exhibit notice of the proposal on the land to which the proposal relates, and*
- c) *give notice of the proposal to such persons as appear to it to own or occupy the land adjoining the community land, and*
- d) *give notice of the proposal to any other person, appearing to the council to be the owner or occupier of land in the vicinity of the community land, if in the opinion of the council the land the subject of the proposal is likely to form the primary focus of the person’s enjoyment of community land.”*

Section 47(2) of the LG Act specifies that:

“A notice of the proposal must include:

- *information sufficient to identify the community land concerned*
- *the purpose for which the land will be used under the proposed lease, licence or other estate*
- *the term of the proposed lease, licence or other estate (including particulars of any options for renewal)*
- *the name of the person to whom it is proposed to grant the lease, licence or other estate (if known)*

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- *a statement that submissions in writing may be made to the council concerning the proposal within a period, not less than 28 days, specified in the notice.”*

Council publicly notified and exhibited the proposed Licence as follows:

- 4 June 2019 – notice in the Tweed Link;
- 5 June 2019 – notice in the Tweed Daily News;
- 6 June 2019 – notice in the Tweed Valley Weekly;
- 7 June 2019 – notice exhibited on the land (A4 paper attached to the door of the Men’s Shed);
- 11 June 2019 – letters sent to 13 adjoining landowners;
- 12 June 2019 – letter sent to interested party, the NSW Office of Environment & Heritage (“OEH”), now known as the Biodiversity and Conservation Division of the Environment, Energy and Science (“EES”) Group which forms part of the new Department of Planning, Industry and Environment.

An amended notice to clarify certain aspects of the proposed Licence was again publicly notified and exhibited as follows:

- 25 June 2019 – notice in the Tweed Link;
- 26 June 2019 – notice in the Tweed Daily News;
- 27 June 2019 – notice in the Tweed Valley Weekly;
- 25 June 2019 – notice exhibited on the land (corflute sign on front gate to Black Rocks Sports Field);
- 25 June 2019 – letters sent to 13 adjoining landowners;
- 25 June 2019 – letters sent to interested party, the NSW Office of Environment & Heritage;
- from 25 June 2019 to 23 July 2018 – displayed on Council’s “*What’s on Exhibition*” and “*Your Say Tweed*” webpages;

Submissions closed on 23 July 2019.

Public submissions were therefore open for a total of 49 days, exceeding the 28 day requirement set out in the LG Act.

Public submissions received

Section 47(3) of the LG Act states that “*Any person may make a submission in writing to the council during the period specified for the purpose in the notice*”.

The submissions received were:

	In support	Opposed	TOTAL
Submissions	765	12	777
Signatories	837	12	849

A table listing the submissions received is included as confidential attachments to this report. The attachment is confidential as it contains personal information (i.e. names and addresses) of submitters.

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The submissions made in support of the grant of the Licence included submissions from 2 adjoining landowners and 9 organisations, namely:

- Pottsville and District Men's Shed;
- St Ambrose Primary School, Pottsville;
- Pottsville Beach Cricket Club;
- RSL Pottsville & District Sub-Branch;
- NXSports Community Foundation Limited;
- Secret Sounds Festival;
- Pottsville Beach Neighbourhood Centre;
- Ramtech Pty Ltd;
- Water Services Association of Australia.

The statements made in the submissions received in support of the Licence can be summarised as follows:

- the Men's Shed provides a necessary and valuable service to the community where men can come together to share, socialise, exchange life stories, share skills, make things etc, assisting both their physical and mental health and wellbeing;
- the items made by the Men's Shed benefit a wide range of community members, e.g. refurbishing a stool for an elderly lady, making possum catching boxes and bird boxes for Currumbin Sanctuary, making toys for less privileged children;
- the Men's Shed are extremely inclusive, e.g. people with disabilities who need extra support have been welcomed and assisted in being taught woodworking skills;
- koalas have been sighted at the site both before and after the operation of the Men's Shed, indicating that both can co-exist.

The submissions that were opposed to the grant of the Licence were received from 2 adjoining landowners and 1 organisation, Earth Learning Org.

Council also received correspondence from the EES Group, formerly the OEH. The response from the EES Group is attached to this report as a non-confidential attachment.

The EES response did not support or oppose the grant, but recommended that, prior to granting the Licence, Council should satisfy itself that various aspects have been considered.

The statements made in the submissions received that were opposed to the Licence, as well as the recommendations received from the EES Group, are summarised in a non-confidential table attached to this report.

If Council were of the mind to support the recommendation as detailed in the report, the reasons to provide to the Minister to adhere to section 47(4) of the LG Act will be as follows:

Section 47(4) of the LG Act states that "before granting the ... licence ... council must consider all submissions duly made to it".

Council has considered the submissions received from the public, and has decided to grant the Licence for the following reasons:

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1. There was overwhelming public support in favour of granting the Licence (i.e. 837 signatories in support versus 12 signatories who were against);
2. The Men's Shed provides a valuable community service that assists the physical and mental health and wellbeing of a wide range of community members; and
3. Council is satisfied that the grant of the Licence is consistent with all applicable environmental legislation.

Council's decision / reasons in response to each statement made in opposition to the Licence, as well as the recommendations listed by the EES Group, are summarised in a non-confidential table attached to this report.

Minister's approval

Section 47(5) of the LG Act states that:

"The council must not grant the ... licence ... except with the Minister's consent, if ... a person makes a submission by way of objection to the proposal".

As there were 10 submissions received by way of objection to the proposal, Council may only grant the Licence with the consent of the Minister.

Section 47(6) of the LG Act states that:

"If the council applies for the minister's consent, it must forward with its application:

- *a copy of the plan of management for the land*
- *details of all objections received and a statement setting out, for each objection, the council's decision and the reasons for its decision*
- *a statement setting out all the facts concerning the proposal to grant the lease, licence or other estate*
- *a copy of the public notice of the proposal*
- *a statement setting out the terms, conditions, restrictions and covenants proposed to be included in the lease, licence or other estate*
- *if the application relates to a lease or licence for a period (including any period for which the lease or licence could be renewed by the exercise of an option) exceeding 21 years, a statement outlining the special circumstances that justify the period of the lease or licence exceeding 21 years*
- *a statement setting out the manner in which and the extent to which the public interest would, in the council's opinion, be affected by the granting of the proposed lease, licence or other estate, including the manner in which and the extent to which the needs of the area with respect to community land would, in the council's opinion, be adversely affected by the granting of the proposed lease, licence or other estate."*

Council now seeks authorisation to apply to the Minister, in the manner set out above in s47(6) of the LG Act, for consent to grant the Licence.

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OPTIONS:

1. Council applies to the Minister for consent to grant the Licence.
2. Council does not apply to the Minister, and does not grant the Licence.

CONCLUSION:

The submissions received from the public have been reviewed and support for the granting of the Licence can be made for the following reasons:

1. There was overwhelming public support in favour of granting the Licence (i.e. 837 signatories in support, versus 12 signatories against);
2. The Men's Shed provides a valuable community service that assists the physical and mental health and wellbeing of a wide range of community members; and
3. Council is satisfied that the grant of the Licence is consistent with all applicable environmental legislation.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

An application to the Minister is necessary if Council supports the granting of the licence, pursuant to section 47(4) of the LG Act.

d. Communication/Engagement:

Consult - We will listen to you, consider your ideas and concerns and keep you informed.

This report follows a public notification and exhibition process.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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| Attachment 1. | Letter 23 July 2019 from Biodiversity and Conservation Division of the Environment, Energy and Science Group within the NSW Department of Planning, Industry and Environment to Tweed Shire Council (ECM 5990304). |
| Attachment 2. | Summary of objections received and Council's decision / reasons in relation to each objection. (ECM 6042099). |
| (Confidential) Attachment 3. | List of submissions received in support of grant of Licence (ECM 5990324). |
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(Confidential) Attachment 4. List of submissions received opposing grant of Licence (ECM 6031460).

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