



northern
beaches
council

MEMOS

NORTHERN BEACHES COUNCIL

TUESDAY 30 APRIL 2024

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To: All Councillors
From: A/Executive Manager, Property
Date: 29 April 2024
Subject: Memo – Item No 13.2 – Outcome of Public Exhibition Draft Plan of Management for Lot 2 DP827733, 316 Hudson Parade, Clareville
Record Number: 2024/310473
Attachments:

- 1 Item 13.1 Consideration of Licence Request for Council Community Land Lot 2 DP 827733 (Within Refuge Cove Reserve) and Adjoining 316 Hudson Parade, Clareville.
- 2 Item 13.9 Alternative Procurement for Consideration of Request for Licence of Community Land Lot 2 DP 827733 (within Refuge Cove Reserve) Adjoining 316 Hudson Parade, Clareville.

Dear Councillors,

In line with recent discussions between Council staff and the Office of Local Government (OLG) regarding the proposed plan of management for Lot 2 DP 827733, being part of 316 Hudson Parade, Clareville (Land), the OLG has recommended that the prior resolutions of Council in respect of a proposed licence for the Land addressed in the proposed plan of management be included in the recommended resolution for the adoption of the plan of management.

Attached for your reference are the relevant Council reports.

The changes to the recommendations have been made in the agenda item and therefore the recommendations can be adopted by exception should Council choose to do so. The OLG advice is that the recommendations are considered separately. The second recommendation will only be considered if recommendation 1 is adopted.

NEW RECOMMENDATION 1:

That Council:

1. Note its consideration of all submissions received concerning the draft Plan of Management for Lot 2 DP 827733, being part of 316 Hudson Parade, Clareville (Land).
2. Note its opinion that the proposed amendments to the Draft Plan of Management for the Land as per Attachment 2 are not substantial.
3. Adopt the Plan of Management.

NEW RECOMMENDATION 2:

That Council:

1. Note the prior resolutions of Council on 26 October 2021 and 26 April 2022 related to consideration of a licence over the Land.
2. Noting the submissions received objecting to the proposed licence over the Land, apply to the Minister for Local Government in accordance with section 47(5) of the Local Government Act 1993 for consent to grant the proposed licence.
3. Subject to the consent of the Minister for Local Government to the grant of the proposed licence, grant a licence to the owner of Lot 1 DP 827733, being part of 316 Hudson Parade

Clareville, for the purpose of boatshed and access structures on the Land for a fee in accordance with Council's adopted Fees and Charges and for a term of twenty (20) years.

4. Delegate authority to the Chief Executive Officer to do all things necessary to negotiate the terms of the licence and to execute all required documentation in order to give effect to the licence and the Plan of Management.



Kristie Debney
A/Executive Manager, Property

ITEM 13.1	CONSIDERATION OF LICENCE REQUEST FOR COUNCIL COMMUNITY LAND LOT 2 DP 827733 (WITHIN REFUGE COVE RESERVE) AND ADJOINING 316 HUDSON PARADE, CLAREVILLE
REPORTING MANAGER	EXECUTIVE MANAGER PROPERTY
TRIM FILE REF	2021/306030
ATTACHMENTS	1 Location Map 2 Submissions

SUMMARY

PURPOSE

To consider an application for a 20 year licence from the owner of 316 Hudson Parade, Clareville for use of an area of adjoining Community Land (Lot 2 DP 827733) for the purpose of access stairs and part boatshed.

EXECUTIVE SUMMARY

The owner of 316 Hudson Parade, Clareville (the applicant) has applied to enter into a licence agreement with Council to use an area of Community Land within Refuge Cove Reserve which adjoins 316 Hudson Parade to facilitate the construction of a boatshed and associated access stairs on Lot 2 DP 827733 (Lot 2) and the ongoing use of these structures. The subject area is approximately 58 sqm.

Lot 2 was the subject of a lease between Pittwater Council and a previous owner which commenced on 4 March 1993 and terminated on 4 March 2013.

On 7 March 2016, Pittwater Council resolved to re-categorise Lot 2 from 'Natural Area' to 'General Community Use' and to grant the General Manager (now known as the CEO) delegation to negotiate the terms and conditions of a new lease. At that time, a timber boatshed existed partially on Lot 2 and partially on Crown Land adjoining Lot 2, being the Pittwater waterway.

On 14 September 2018 Council served a Stop Work Order following the complete demolition of the boatshed. The Stop Work Order was appealed to the Land and Environment Court (Proceedings No. 2018/00308701) by the applicant. The appeal was subsequently discontinued with Council's consent. A development application has subsequently been lodged for the boatshed works.

Public notice of the application for a licence was given for a period of 28 days in August and September 2020 in accordance with section 47 of the *Local Government Act 1993*. Council received a total of 46 submissions on the proposed licence during the notification period (30 in support and 16 against). The *Local Government Act 1993* provides that a council must not grant a licence in respect of community land for a period exceeding 5 years except with the Minister's consent, if a person makes a submission by way of objection to the proposal. Accordingly, should Council wish to grant the licence, Council will need to apply for the Minister's consent to do so.

This report recommends that Council authorise the grant of the licence subject to Minister's consent. The approval of a licence does not authorise specific works on the site and the current development application for proposed works will be assessed separately in accordance with the *Environmental Planning and Assessment Act 1979*. It is intended that the proposed licence would be subject to the grant of development consent.

The licence application was addressed in the business papers for the Ordinary meeting of Council held on 27 April 2021 at Item 13.5 - Consideration of Licence Request for Council Community Land Lot 2 DP 827733 (within Refuge Cove Reserve) and adjoining 316 Hudson Parade, Clareville. Following correspondence from the applicant, Council unanimously resolved at the meeting to

**ATTACHMENT 1 : ITEM 13.1 CONSIDERATION OF LICENCE REQUEST FOR COUNCIL COMMUNITY LAND
LOT 2 DP 827733 (WITHIN REFUGE COVE RESERVE) AND ADJOINING 316 HUDSON PARADE, CLAREVILLE.
- ITEM MEMO - NORTHERN BEACHES COUNCIL MEETING - 30 APRIL 2024**

defer the item. Since that time Council staff have further communicated with members of the community and the applicant regarding the matter. As a result, the report has been updated and the recommendation amended.

RECOMMENDATION OF DIRECTOR TRANSPORT AND ASSETS

That:

1. Council note that it has considered all submissions in respect to the proposed licence referred to in Item 3 below (proposed licence).
2. Council apply to the Minister for Local Government in accordance with section 47 of the *Local Government Act 1993* for consent to grant the proposed licence.
3. Subject to the consent of the Minister for Local Government to the grant of the proposed licence and subject to the grant of development consent in respect of DA2020/1762, Council grant a new licence to the owner of 316 Hudson Parade Clareville for approximately 58 sqm of community land adjoining 316 Hudson Parade, Clareville described as Lot 2 DP 827733 for the purpose of boatshed and access structures for an amount in accordance with Council's adopted Fees and Charges and for a term of twenty (20) years.
4. The proposed licence be subject to such other terms and conditions as the Chief Executive Officer considers appropriate.
5. All costs associated with the granting of the proposed licence including but not limited to, Council's legal costs, document registration and GST, if applicable, be funded by the applicant.
6. Council delegate authority to the Chief Executive Officer to do all things necessary and to execute all required documentation in order to give effect to the above.

REPORT

• BACKGROUND

In 1993, a previous owner of 316 Hudson Parade, Clareville dedicated to Council foreshore land at Refuge Cove Reserve, now Lot 2. The transfer was conditional upon a lease being provided over the access way to the foreshore and the section of the original boatshed above the mean high water mark. A lease was subsequently granted by Pittwater Council to the owner in accordance with this condition.

The previous lease agreement expired on 4 March 2013. In 2015 the applicant, after purchasing the property at 316 Hudson Parade approached Pittwater Council seeking to renew the agreement for a further twenty (20) year term.

Pittwater Council at its meeting on 7 March 2016 resolved (the 2016 Resolution) as follows:

C10.1 316 Hudson Parade Clareville - Renewal of Expired Lease

- 1. That the report by the Independent Chairperson regarding the re-categorisation of Lot 2, DP827733 be noted.*
- 2. That the land, Lot 2, DP927733 in Refuge Cove be re-categorised from Natural Area to General Community Use.*
- 3. That the General Manager be delegated to negotiate the terms and conditions of a new lease based on the expired lease following the re-categorisation of the land.*

On 15 November 2016, a complying development certificate (CDC) was issued by an accredited certifier for development on foreshore land including Lot 2 described as "Repairs and restoration of existing structures". The CDC related to the boatshed that existed on Lot 2 and the adjoining Crown Land.

On 14 September 2018, Council served a Stop Work Order following the complete demolition of the existing boatshed. It was Council's view that this work was not carried out in accordance with the CDC, the CDC was not lawfully issued and the works were undertaken without owner's consent. The Stop Work Order was appealed to the Land and Environment Court (Proceedings No. 2018/00308701). The appeal was subsequently discontinued by the applicant with Council's consent. In connection with the discontinuance of the proceedings, the applicant agreed to surrender the CDC and Council agreed to act on any outstanding Council resolutions made on 7 March 2016 (specifically the 2016 Resolution).

Item 2 of the 2016 resolution relating to the re-categorisation of the land has been completed by Council.

This report is to address item 3 of the 2016 Resolution. To action this item of the resolution, Council staff have undertaken public notification of the proposed licence in accordance with section 47 of the *Local Government Act 1993* which concluded on 24 September 2020. A summary of submissions is noted in the table within this report. Copies of all submissions are in Attachment 2.

While the previous formal agreement for the subject land was a lease, following consultation with the applicant, the proposed form of agreement that was notified was a licence granting permission to use the land rather than provide exclusive use.

Concurrent to the licence application, Development Application (DA) DA2020/1762 for demolition works and the construction of a boatshed, ramp, slipway, jetty and steps which contemplates works over various parcels of land in the vicinity of 316 Hudson Parade, Clareville including Council land at Lot 2 was lodged with Council on 15 February 2021 and has not yet been determined. Owner's consent from Council as the land owner of Lot 2 has been given the applicant to lodge the DA. The DA will be reported to the Northern Beaches Local Planning Panel for determination in due course.

**ATTACHMENT 1 : ITEM 13.1 CONSIDERATION OF LICENCE REQUEST FOR COUNCIL COMMUNITY LAND LOT 2 DP 827733 (WITHIN REFUGE COVE RESERVE) AND ADJOINING 316 HUDSON PARADE, CLAREVILLE.
- ITEM MEMO - NORTHERN BEACHES COUNCIL MEETING - 30 APRIL 2024**

The licence application was addressed in the business papers for the Ordinary meeting of Council held on 27 April 2021 at *Item 13.5 - Consideration of Licence Request for Council Community Land Lot 2 DP 827733 (within Refuge Cove Reserve) and adjoining 316 Hudson Parade, Clareville.* Following correspondence from the applicant, Council unanimously resolved at the meeting to defer the item. Since that time, Council staff have further communicated with members of the community and the applicant regarding the matter. As a result, the report has been updated and the recommendation amended.

CONSULTATION

Public notice of the application for a licence was given for a period of 28 days in accordance with section 47 of the *Local Government Act 1993*. The public notification included a notice on Council’s website, notice letters to surrounding property owners and notice signs adjoining 316 Hudson Parade, Clareville.

The submission period specified in the public notice commenced on 27 August 2020 and concluded on 24 September 2020.

Council received a total of 46 submissions on the proposed licence during the notification period (30 in support and 16 against).

In accordance with section 47(5) of the *Local Government Act 1993*, if an objection to the proposal is received and Council proposes to grant a licence, Council is required to apply to the Minister for Local Government for consent to grant the licence. Alternatively, Council may choose to refuse the application and no application to the Minister would be required.

A summary of the submissions received is included in the below table within this report. Copies of all submissions are in Attachment 2.

The submissions by theme are summarised below along with staff responses.

Summary of submissions by theme	Submission Classification	Staff Response
1. Privatisation of public land	Objection	A licence over this land does not specifically exclude the public’s access other than to any private structures on the land (where appropriate DA approval is granted).
2. Objection to re-categorisation land (as resolved by Pittwater Council in 2016)	Not related to licence specifically	The re-categorisation is not being considered by this licence notification process and has occurred as per the 2016 Resolution of Pittwater Council. A new resolution would be required to revert the categorisation of the land from General Community Use back to Natural Area.
3. Impact on native vegetation and environmental issues with structures (eg. rebuild of boatshed, retaining walls etc.)	Not related to licence specifically but to the structure that would be subject to DA approval	The licence would only permit the occupation of the land. Any structure to be erected on the land would require the submission of a DA. Any DA over this area would be required to address impacts on aquatic ecology, coastal hazards and public access.

**ATTACHMENT 1 : ITEM 13.1 CONSIDERATION OF LICENCE REQUEST FOR COUNCIL COMMUNITY LAND
LOT 2 DP 827733 (WITHIN REFUGE COVE RESERVE) AND ADJOINING 316 HUDSON PARADE, CLAREVILLE.
- ITEM MEMO - NORTHERN BEACHES COUNCIL MEETING - 30 APRIL 2024**

Summary of submissions by theme	Submission Classification	Staff Response
4. Impact to Foreshore Area <ul style="list-style-type: none"> • Visual impact and amenity • Setting a precedent for more structures around foreshore area 	Not related to licence specifically but to the structure that would be subject to DA approval	The licence is for a renewal of an existing 20 year licence not a licence for the use of the foreshore area for the first time. It is noted that the applicant considers that existing use rights apply.
5. Unresolved illegal works within adjoining reserve need to be resolved first	These works are being assessed separately to the licence	The works mentioned are being addressed by Council's Environmental Compliance Unit. The licence does not itself permit the works.
6. Existing area	Support	The licence area noted is proposed to be the same as the expired agreement.
7. No impact - access to foreshore will be maintained, does not block community access	Support	The licence itself does not change the access to the foreshore that is currently in place.
8. Fix the boatshed, will enhance foreshore	Support but not related to licence specifically but to the structure that would be subject to DA approval	The licence of itself would not permit the re-building of the boatshed. This development will be considered separately under a DA.

Having regard to all the circumstances including the submissions received in respect of the proposal it is recommended that Council authorise the proposed licence.

TIMING

The steps required to enter into licence over Lot 2 DP 827733 are expected to be completed within 6 months, subject to the grant of the relevant consents.

• **LINK TO STRATEGY**

This report relates to the Community Strategic Plan Outcome of:

- Good Governance - Goal 20: Our Council efficiently and effectively responds to, and delivers on, the evolving needs of the community.

• **FINANCIAL CONSIDERATIONS**

The annual rental amount for the proposed licence area has been calculated in accordance with Council's adopted Fees and Charges for use of public land. The current annual rate per square metre (sqm) is \$96.00/sqm for use of public land. Based on the area of Lot 2 DP 827733 being 58 sqm, the proposed annual licence fee for 2021-2022 will be \$5,568.00 per annum (inclusive of GST).

• **SOCIAL CONSIDERATIONS**

There will be minimal change for the community as the area has previously been the subject to a lease and will still allow public thoroughfare through Refuge Cove Reserve.

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ENVIRONMENTAL CONSIDERATIONS

The proposed licence will have minimal environmental impact as no actual building works are proposed as part of this renewal. The proposed building works will be assessed separately under a DA in accordance with the *Environmental Planning and Assessment Act 1979*. The proposed licence would be subject to development consent being granted for any proposed new structures on the subject land.

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GOVERNANCE AND RISK CONSIDERATIONS

The approval of a licence does not authorise specific works on the site and site works will still require separate approval via a DA process.

The proposed licence terms would provide that commencement of the licence is subject to development consent being granted for the proposed works/structures/use.

The reporting of the licence application to Council is consistent with the 2016 Resolution and the terms on which the legal proceedings brought against Council by the applicant in the Land and Environment Court (Proceedings No. 2018/00308701) were resolved. The proceedings were discontinued on the basis that, amongst other things, Council act on any outstanding Council resolutions made on 7 March 2016.

ITEM 13.9	ALTERNATIVE PROCUREMENT FOR CONSIDERATION OF REQUEST FOR LICENCE OF COMMUNITY LAND LOT 2 DP 827733 (WITHIN REFUGE COVE RESERVE) ADJOINING 316 HUDSON PARADE, CLAREVILLE
REPORTING MANAGER	EXECUTIVE MANAGER PROPERTY
TRIM FILE REF	2022/189024
ATTACHMENTS	1 Location Map - Proposed Licence of Council Community Land adjoining 316 Hudson Pde Clareville 2 Email from Office of Local Government - re Proposed Licence Community Land - Rear of 316 Hudson Parade Clareville - Request for Additional Information

SUMMARY

1. PURPOSE

To seek Council approval, in accordance with Section 55(3)(i) of the *Local Government Act 1993* (LG Act), to enter into a direct tenure arrangement with the owner of 316 Hudson Parade, Clareville for use of an area of adjoining Community Land (Lot 2 DP 827733) for the purpose of access stairs and part boatshed.

2. EXECUTIVE SUMMARY

In accordance with Council's previous resolution dated 26 October 2021 regarding this matter, Council applied to the Minister for Local Government (OLG) for consent to grant the proposed 20 year licence.

OLG has now requested a specific resolution by Council approving the direct tenure arrangement rather than awarding the licence under a tender process as outlined in Section 55 of the LG Act.

RECOMMENDATION OF DIRECTOR TRANSPORT AND ASSETS

That:

- Further to Council's resolution dated 26 October 2021 regarding this matter and in accordance with Section 55(3)(i) of the *Local Government Act 1993*, Council enter into a direct arrangement with the owner of 316 Hudson Parade, Clareville for the licence of Council Community Land Lot 2 DP 827733 adjoining 316 Hudson Parade, Clareville, as a satisfactory result would not be achieved by inviting tenders because of extenuating circumstances given:
 - It would be inappropriate to licence the subject land to anyone other than the adjoining owner at 316 Hudson Parade Clareville as access by land can only be easily obtained from 316 Hudson Parade.
 - The property has an existing licence for the waterfront facilities below the Mean High Water Mark from NSW Department of Planning & Environment – Crown Lands which forms part of these facilities.
- Council delegate authority to the Chief Executive Officer to do all things necessary in order to give effect to this resolution.

REPORT

3. BACKGROUND

This is a historical matter relating to an application to licence Council Community Land Lot 2 DP 827733 (with an area of approximately 58 sqm) within Refuge Cove (the subject land) by the owner of 316 Hudson Parade, Clareville (the applicant) to facilitate the construction of a boatshed and associated access stairs.

On 26 October 2021, Council resolved as follows:

“That:

1. *Council note that it has considered all submissions in respect to the proposed licence referred to in Item 3 below (proposed licence).*
2. *Council apply to the Minister for Local Government in accordance with section 47 of the Local Government Act 1993 for consent to grant the proposed licence.*
3. *Subject to the consent of the Minister for Local Government to the grant of the proposed licence and subject to the grant of development consent in respect of DA2020/1762, Council grant a new licence to the owner of 316 Hudson Parade Clareville for approximately 58 sqm of community land adjoining 316 Hudson Parade, Clareville described as Lot 2 DP 827733 for the purpose of boatshed and access structures for an amount in accordance with Council’s adopted Fees and Charges and for a term of twenty (20) years.*
4. *The proposed licence be subject to such other terms and conditions as the Chief Executive Officer considers appropriate.*
5. *All costs associated with the granting of the proposed licence including but not limited to, Council’s legal costs, document registration and GST, if applicable, be funded by the applicant.*
6. *Council delegate authority to the Chief Executive Officer to do all things necessary and to execute all required documentation in order to give effect to the above.”*

Council subsequently wrote to the Minister for Local Government via the Office of Local Government (OLG) requesting consent for the proposed licence.

OLG is currently processing Council’s request and has now requested that Council provide a specific resolution (in accordance with Section 55(3)(i) of the *Local Government Act 1993*) on the reasons why it did not seek tenders for such a proposed licence.

Section 55(3)(i) of the *Local Government Act 1993* states:

“(3) This section does not apply to the following contracts:

- (i) a contract where, because of extenuating circumstances, remoteness of locality or the unavailability of competitive or reliable tenderers, a council decides by resolution (which states the reasons for the decision) that a satisfactory result would not be achieved by inviting tenders.”*

Council has not sought tenders for the proposed licence in this extenuating circumstance for following reasons:

1. The proposed licence area is located directly adjacent to the applicant’s land. Therefore, it would be impractical, unsuitable and inappropriate to potentially have a third party occupy this site, especially as access via land can only be easily obtained through the applicant’s adjoining property and;

2. The proposed licence area also connects to the applicant's waterfront facilities, below the Mean High Water Mark, which is licensed directly from NSW Department of Planning & Environment - Crown Lands to the applicant.

4. LINK TO STRATEGY

This report relates to the Community Strategic Plan Outcome of:

- Good Governance - Goal 20: Our Council efficiently and effectively responds to, and delivers on, the evolving needs of the community.

5. FINANCIAL CONSIDERATIONS

The annual rental amount for the proposed licence area has been calculated in accordance with Council's adopted Fees and Charges for use of public land. The current annual rate per square metre (sqm) is \$96.00/sqm for use of public land. Based on the area of Lot 2 DP 827733 being 58 sqm, the proposed annual licence fee for 2021-2022 will be \$5,568.00 per annum (inclusive of GST).

6. SOCIAL CONSIDERATIONS

There will be minimal change for the community as the area has previously been the subject to a lease and will still allow public thoroughfare through Refuge Cove Reserve.

7. ENVIRONMENTAL CONSIDERATIONS

The proposed licence will have minimal environmental impact as no actual building works are proposed as part of this renewal. The proposed building works will be assessed separately under a DA in accordance with the *Environmental Planning and Assessment Act 1979*. The proposed licence would be subject to development consent being granted for any proposed new structures on the subject land.

8. GOVERNANCE AND RISK CONSIDERATIONS

The proposed licence agreement will provide insurance and indemnity clauses to protect Council and clearly define the licence area.