

*Telephone inquiries
Carmel Foster
49800375
Please quote file no: A2004-0781/285*

R.A Young
Chairman, Tomaree Ratepayers and Residents Association
PO Box 290
Nelson Bay NSW 2315

Dear Mr Young

Re: Proposed PPP – Donald Street East Carpark, Nelson Bay

Thankyou for your enquiry with regards to the Proposed PPP – Donald Street Carpark, Nelson Bay.

I apologise for the delay in responding to your correspondence. I note your email dated 27 March 2009 and although Council does have the information requested, as I have only been with Council a few months I am sure you can appreciate the time required to research the background of the project to provide you with the information you require. Additionally it is necessary to assess the information to determine any commercial information that may not be available to the public.

Please find attached the brief for your information. As it was a public document we are able to release it to you. One non-conforming and two conforming submissions were received. The criteria utilised to assess the submissions is included in section four of the attached Call for Detailed Proposals document.

The existing structure in the short term will require substantial maintenance at considerable cost to Council. Under the project a public car park will be delivered to and remain in the ownership of Council.

After the call for detailed proposals had been assessed and the preferred proponent selected legislation has been introduced requiring Council to enter into a transitional stage of a Public Private Partnership. Within the transitional stage a step that was not previously required must now be undertaken, it is described as the "Initial Assessment Phase". Following are the procedural steps for complying with the PPP provisions of the Local Government Act:

- 1) Project Description and the project's relationship to Council's strategic and management plans, including reasons why PPP is the preferred delivery model;
- 2) a clear statement of outcomes/deliverables as agreed by a resolution of Council;
- 3) projected timeframe for project;
- 4) estimated total project costs and sources of funding;
- 5) preferred extent/ value of council contribution to project and/or equity position in project;
- 6) calculation of Council's annual revenue for the type of PPP proposed;
- 7) preferred risk assessment/management plan prepared in accordance with the standard AS/NZS 4360: 2004; and

- 8) preferred management and governance structure for the PPP entity.

In the risk assessment section of the report to the Director General Council must identify and document all actual or potential risk elements associated with the project in accordance with the relevant Australian Standard.

The report must set out the allocation of any identified risk to the parties in the PPP proposal and the mitigation strategies, including ways to manage the risk. The risk assessment should include best and worst case scenarios.

The following risks will be considered in the Report:

- 1) **Risks associated with the site;** such as environmental issues, acquiring the requisite approvals, zoning issues, physical site risks (such as the possibility of the underground stream), heritage and other claims on the site, control or ownership of the land and the risks associated with land ownership
- 2) **Design, Construction and Commissioning Risks;** such as the risk that the developer would only partly finish the project. The most significant risk is that the developer demolishes the existing car park and then finds itself in a position where it does not have the funds to or does not wish to complete the development or rebuild the car park. This would mean Council would be left with a block of land without a car park. Other risks include the risk that the developer is unable to deliver the required outcomes at the cost and in the time frame anticipated.
- 3) **Risks Associated with the Private Sector Partner;** such as its financial position and its effect on the project, its technical capacity and ability to deliver contracted outcomes. Other risks include the potential effect of ownership changes in the private partner and any probity matter discovered after execution of the contract. In this section we would also need to look at the significance of the trust structure of the private partner and the proposed limitation of liability to the trust assets.
- 4) **Financial Risks;** such as the availability of finance and the ability of the private partner to fund the whole project in the current market, the conditions attaching to any loans and/or debt, prospects of re-financing the project should it become necessary, taxation matters and interest rates. This should also consider the impact of the proposed Financier's Side Deed on Council's interest in the project.
- 5) **Operational Risks;** such as the possible escalation in costs, projected maintenance/refurbishment costs being adversely affected by design and construction quality, specifications not being met, failure of subcontractors and products remaining contemporary, competitive in technology terms.
- 6) **Market Risks;** such as general economic downturn (particularly significant at the moment), the effect of competition or economic downturn in the property market or any other market the project relies on in a specific way, demographic issues in Nelson Bay and their effect on demand for services/facilities to be provided by the project and inflationary consequences.
- 7) **Network/Interface risks;** such as the effect of withdrawal or variation (either in provision or price) of a complementary or support network or service, and the interaction between any core service of Council and contracted services under the agreement.
- 8) **Industrial Relations Risks;** such as strikes and other forms of industrial action that may adversely affect the project;
- 9) **Legislative/Government or Sovereign Risk;** such as risks associated with development approvals and changes in law or regulations that may effect the project;
- 10) **Risks associated with asset ownership;** accounting for the possibility/probability of technical obsolescence of any facility or part thereof, losses due to termination of any agreements inherent in the project or a breach of contract not being adequately compensated for and the value of the asset transferred to Council being less than anticipated.

- 11) **Force Majeure** which is essentially the risk that one or more of the parties are unable to meet the project outcomes due to major external events outside the parties control such as fire, flooding, significant storm, act of war etc.

The PPP Guidelines state that Councils should, at the minimum establish the governance arrangements outlined in Appendix 6 of the Guidelines the following is the suggested governance structure that will apply to the development.

- 1) **A Steering Committee;** for the development of each specific PPP proposal and the eventual negotiation of contracts. The Steering Committee should be accountable to the Council.
- 2) **Probity adviser;** The probity adviser should be appointed from the commencement of the process of the project to ensure its transparency, integrity and accountability. The position should be independent to and external to Council. The probity adviser should report to the Steering Committee.
- 3) **A Project Manager;** The project manager should have the appropriate expertise and skills to manage the project development phase and to interact with the private sector on operational aspects of any PPP proposal. This position is a Council appointment but need not be a Council officer. The position is accountable to the Steering Committee and to Council.
- 4) **A Project Control Group;** This group is responsible for the timely development and quality and performance of the project. The group should manage all aspects of the project development including project specifications, financial/economic appraisals and establishing relevant benchmarks. This group may include councillors or Council staff, contracted external experts and community representatives. There should be a Project Director who chairs this group.
- 5) **The Management Board; for the carriage of the project.** This Board is constituted by representatives of the private partner and representatives of Council in proportion to their relative contributions. Where Council's contributions are less than the private sector partner's care should be taken to appropriately protect Council's minority interests.

Once the report is completed it will address your concerns raised in points 2, 4, 5, 6 and 7.

The area to be provided in the development is 3,623m²; the legal description of the land is within the attached report. The current market value of the land is 4.1 million less the cost to demolish the structure.

In reference to point 8 the PPP does not require rezoning of the land and any adjoining land. Therefore compensation under the provisions of the Just Terms Compensation Act is not applicable.

I draw your attention to the resolution:

- 1) Authorise the General Manager to prepare and submit to the Department of Local Government pursuant to section 400f of the Local Government Act 1993 NSW an assessment of the proposed Public Private Partnership.
- 2) Authorise the Mayor and the General Manager to affix the seal of Council to the assessment.
- 3) Authorise the Mayor and the General Manager to negotiate the relevant contractual documentation for the proposed Public Private Partnership in accordance with the provisions of the Local Government Act.

It must be reiterated that the resolution relates to the Initial Assessment stage only and further processes will require additional resolutions from Council. It should also be noted that the development will be subject to assessment under the provisions of the Port Stephens LEP.

In conclusion the report required for the Initial Stage Assessment is a time consuming and complex process however if Council is able to replace aging infrastructure with a new community facility at minimal cost it should be considered a good outcome.

If you have any questions in relation to the above please contact me on 02 4980 0375.

Regards,

Carmel Foster

Commercial Property Manager
Port Stephens Council

Date 31 March 2009