DA 2013-1036

Barry Smith 31 October 2013

Cathy Merchant

President

Ryde – Hunters Hill Flora & Fauna Preservation Society

PO Box 2127

BORONIA PARK 2111

Dear Cathy:

**Gladesville Shopping Village (DA 2013-1036)**

Reference is made to your correspondence received on 24th October 2013 regarding the above DA and the questions contained therein.

The following information is provided in response and where relevant the Council minutes and resolutions have been included. These are public documents and are available for inspection.

1. **Since 1993, which parcels of public land within the area covered by the GSV DA have been classified or reclassified as “operational”?**

**RESPONSE:**

No parcels of land in this area have been classified or reclassified since 1993.

However, the following lands were classified as operational lands in accordance with the NSW Local Government Act (1993) at an ordinary meeting held on 13 September 1993. **Min. No. 1212/93** (Clr Bannon/Clr Lee)

* 10 Cowell Street
* 4-6 Cowell Street
* Cowell Street Car Park

The proposed classifications were advertised for the required 28 days and public submissions were invited. No submissions were received. A public hearing was not required under the legislation at that time.

Council formally resolved to confirm the classifications at the ordinary meeting held on 22nd November 1993. **Min. No. 1571/93** (Clr Bannon/Clr Keneally)

1. **What Public Hearings were held as part of any classification or reclassification process identified in (1) above and when? What public notification process occurred?**

**RESPONSE:**

See response in Question 1 above.

1. **Could the Society please be provided with any final reports and/or Council resolutions that recommended, and/or resulted in, the classification or reclassification of public land within the GSV DA as “operational”?**

**RESPONSE:**

There are no reports or resolutions, as no land has been reclassified. See also the response to Question1 above.

1. **What other land holdings does Council have that are outside the subject land under the GSV DA, but within the area covered by the former Hunters Hill Local Environmental Plan (Gladesville Village Centre) 2010?**

**RESPONSE:**

3A Cowell Street Gladesville (Council Car Park)

|  |  |  |
| --- | --- | --- |
| **Lot** | **DP** | **Area** |
| 12 | DP631422 | 808.10 |
| 27 | DP979222 | 718.90 |
|  | **Total Area** | **1527.00** m2 |

 Zoning: B4 Mixed Use

 Land Classification: Operational land

Site improvements: Council car park

(Note: Also part of Min. No. 1571/93)

1. **What is the current land classification of any public land holdings identified in 4 above?**

If “operational”, when and how did classification or reclassification occur?

If classified as “community”, how have they been categorized?

**RESPONSE:**

Please see the responses above in questions 1 and 4 and Minute No. 1571/93 22nd November 1993.

1. **What was the date of sale of the two land parcels (Flagstaff Street Carpark) that now form part of the current “Coles” development?**

**RESPONSE:**

The land has not been sold. The applicant has been granted an option to purchase on a ‘put and call’ basis.

The following Council resolutions outline the processes undertaken to date relevant to your question:

1. At the ordinary meeting no. 4316 held on **26 November 2011**, in a General Managers report considered in open council, Council resolved as follows:

**Min. No. 424/11** Resolved on the motion of Clr Butt, seconded Clr Sheerin that:

1. Council advises the owner of the Gladesville Village Shopping Centre (GVSC), Moch Pty Ltd, that it is prepared to enter into an agreement to include Councils adjoining lands in any future development proposal for the Gladesville Shopping Village, subject to the terms and conditions being agreed for any future sale (the preferred option), or a joint venture.

2. The following conditions will apply to the sale:

1. The sale to be negotiated will not be subject to approval of any future development applications.
2. At the ordinary meeting no. 4318 held on 13 February 2012 in a general managers report considered in open council, Council resolved as follows:

**20/12** Resolved on the motion of Clr Quinn, seconded Clr Butt that:

1. Council establish the Property Advisory Committee.
2. The functions of the Property Advisory Committee are:
3. To consider and advise Council on the potential for sale of Council property assets
4. To negotiate the terms and conditions of the sale of Council property within the parameters of any delegation granted to the Mayor and General Manager by Council resolution
5. To consider and advise on any property matters referred to the committee by Council.
6. Membership of the committee be the Mayor Clr Hoopmann, Clr Sheerin, Clr Quinn (alternate), the General Manager and Mr Malcolm Rose as independent advisor.
7. The Mayor and General Manager be granted Delegated Authority to negotiate the sale of the following properties subject to approval by Council of the terms and conditions of any sale:

a) 4 – 6 Cowell Street Gladesville (Council Car Park)

|  |  |  |
| --- | --- | --- |
| Lot | **DP** | **Area** |
| 37 | DP979222 | 604.56 |
| 38 | DP979222 | 723.94 |
|  | **Total Area** | **1328.50** m2 |

b) 10 Cowell Street Gladesville (House used as office)

|  |  |  |
| --- | --- | --- |
| **Lot** | **DP** | **Area** |
| 1 | LOT 40 VOL 2655 FOL 13DP952446 | 986.00 |
|  | Total Area | **986.00**m2 |

c) 1c Massey Street Gladesville

|  |  |  |
| --- | --- | --- |
| **Lot** | **DP** | **Area** |
| 1 | LOT 1 DP 420791 | 29.00 |
|  | **Total Area** | **29.00**m2 |

1. At the ordinary meeting no 4328 held on **13 August 2012**, in a report by the Group Manager Development & Regulatory Control considered in open council, Council resolved as follows:

**Min. No. 232/12** Resolved on the motion of Clr Butt, seconded Clr Quinn that Council adopt the fee proposal prepared by Architectus Pty Ltd dated 18 June 2012, for the development assessment for any proposal on the site bounded by Cowell, Flagstaff and Massey Streets, Gladesville.

1. At the ordinary meeting no. 4333 held on **26 November 2012**, Council resolved to adopt in open Council the following recommendations of a report considered as confidential in closed session.

**317/12** Resolved on the motion of Clr McLaughlin, seconded Clr Sheil that:

1. The recommendation in the report be adopted.
2. The Mayor and General Manager be granted delegated authority to conclude negotiations and finalise contract documentation and affix the Seal of Council to documents where required.

In part the recommendation of Committee of the Whole Closed session included the following:

1. Council accepts the offer of Moch Pty Ltd to purchase the properties ……on a Put and Call Option contract.

Please note that in a period of over two years, not one submission has been received from the public in respect of any of these three resolutions.

1. **How was motion 418/11, Draft LEP 2012 --‐Section 64 submission to Department of Planning and Infrastructure (Meeting 28.11.11) acted upon by Mayor Quinn and yourself with specific regard to Point 1(a) and Point 3?**

**RESPONSE:**

**Min. No. 418/11**RESOLVED on the motion of Clr Quinn seconded by Councillor Sheerin resolved that:

1. Council endorse the draft Hunters Hill LEP 2012 for public exhibition subject to:
2. The inclusion of a Heritage Schedule and Heritage Maps, formatted to meet the requirements of the Department of Planning and Infrastructure, and revised to include the following recommendations of the Hunters Hill Heritage:

Review prepared by Paul Davies; which comprise of;

i. Upgrading 12 contributory items to heritage status

ii. Upgrading 37 noted items to heritage status

iii. De-listing 5 existing heritage items

1. Should conditions of certification only require minor amendments to

Hunters Hill Draft LEP 2012 of a technical or procedural nature the Council agree, the General Manager be delegated authority to endorse and exhibit the plan.

With regard to Point 1(a) Council fulfilled this obligation. The properties proposed as draft heritage items when the draft LEP 2012 was exhibited were those properties covered in the Hunters Hill Heritage Review prepared by Paul Davies and recommended for heritage listing.

With regard to Point 3 the conditions of certification did only require minor amendments to the Hunters Hill Draft LEP 2012 and so on receiving S65 certification a report was not put back to Council but rather exhibition of the Draft LEP took place with a report to Council following exhibition. The Certification from the Department was exhibited along with the Draft LEP 2012.

1. **Was the property at 10 Cowell St., Gladesville removed from the exhibition of the Draft Hunters Hill Council LEP 2012 due to “a technical or procedural nature” arising from adoption of the Local Environment Plan and Development Control Plan for the Gladesville Village Centre and the subsequent need for Planning Proposal (Department Ref: PP\_2010\_Hunte\_001\_00)?**

**RESPONSE:**

The property 10 Cowell Street Gladesville was not removed from the exhibition of the Draft Hunters Hill LEP 2012. It was exhibited as a proposed heritage item along with 51 other proposed heritage items. The statutory exhibition period is 28 days and the Draft LEP was exhibited from 23 April to 21 May 2012. Due to Councillor concerns that the exhibition period was not long enough the exhibition period was extended by almost 3 weeks until the 8 June 2012. No submissions were received from the public or the Hunters Hill Heritage Trust about the proposed heritage listing of 10 Cowell Street.

The Draft LEP project was funded by a grant from the State Government and this grant was dependent on the Council submitting an adopted LEP by end of June 2012. Due to the Councillors extending the exhibition period – an extension in time was requested from the Department and they moved the project end point to 31 August 2012. This meant that the time available after 8 June 2012, to summarise submissions, suggest amendments and report to Council was very limited. Any issues that required further work that could be deferred were deferred. This included deferring the decision on 17 proposed heritage items – as all of these items required further discussion/meetings/site visits before Council Staff could recommend them for final inclusion in the draft LEP. This list of 17 proposed heritage items deferred for consideration until the first amendment of the LEP included 10 Cowell Street.

A report recommending adoption of the Draft LEP was put to Council on 25 June and deferred by Council to 23 July 2012. At the meeting on 23 July 2012 Council adopted the draft LEP 2012. Council’s section 68 submission was prepared and lodged with DP & I on 31 August 2012 securing our grant.

1. **What consideration did Council give to the advice by Tom Gellibrand in the**

**Gateway Determination dated 22.4.2010 regarding the need for any public hearings?**

**RESPONSE:**

On 22 April 2010 Tom Gellibrand determined Council’s Planning Proposal to amend height controls applicable to Gladesville Village Centre and to reinstate a conservation area. The Gateway Determination was that the planning proposal could proceed subject to four conditions.

Condition 3 was: No public hearing is required to be held into the matter under section 56(2) e of the EP&A Act. This does not have any bearing on the need to conduct a public hearing under the provisions of any other legislation.

The Council gave full consideration to Mr Gellibrand’s advice in condition 3 and assessed whether a public hearing was required under any other legislation other than section 56(2) of the EP&Act. No public hearing was required.

Please note section 56(2) of the EP&A Act refers to whether a public hearing is to be held into the matter by the Planning Assessment Commission (PAC). PAC was set up to ensure a transparent approach when assessing major gateway determinations/applications. Mr Gellibrand advised no public hearing was required under this section of the Act.

1. **Did a Public Hearing accompany the rezoning of 10 Cowell St, Gladesville from 5(A) Special uses --‐Civic purpose to 3(a) General Business in 2000?**

**RESPONSE:**

The proposed rezoning was publicly advertised and submissions were invited. As the land was operational land there was no requirement for a public meeting.

No submissions were received in response to the advertisement.

Min. No. 544/00 RESOLVED on the motion of Clr Quinn seconded Clr Christie that:

Draft LEP No. 37 for Lot 1 DP952446, No. 10 Cowell Street which seeks to rezone the land from 5(a) Special Uses to 3(a) General Business, be approved and referred to the Minister for Urban Affairs and Planning with a request that he make the plan.

The Plan was gazetted on 2nd February 2001.

1. **What were the conditions of any leases over 10 Cowell St. and how were they authorized? Was a Plan of Management prepared to authorize the lease?**

**RESPONSE:**

As the land is classified as operational land a plan of management is not required.

The property is leased on a normal commercial basis through a local agent.

1. **Has Council undertaken any current, independent studies of prospective social and Community need, including traffic feasibility studies, in relation to the use of public land which could guide any dealings, commercial or otherwise, in relation to any of the public land holdings identified in (1) and (4) above?**

**RESPONSE:**

Yes. A number of appropriate studies were undertaken in conjunction with the preparation of the Gladesville Masterplan and LEP. These are joint studies for both Hunters Hill & Ryde Councils and include a traffic study and an economic viability study.

**RESPONSES TO OTHER MATTERS IN THE CORRESPONDENCE**

**The Society is concerned that Council’s actions have created the perception of a lack of transparency and disregard for due process, particularly in relation to the management and development of public land within the municipality, for commercial gain.**

**RESPONSE:**

Unfortunately Council cannot deal in perceptions and Council totally refutes any suggestion that it has shown a lack of transparency and at all times has followed due process as required by relevant and applicable legislation, as clearly evidenced in the responses to questions 1-12.

All required actions have been undertaken in accordance with the relevant legislation, proposals have been publicly exhibited when required and submissions invited.

All resolutions for necessary actions have been made in open Council.

Council has included within its annual management plan (now known as the Community Strategic Plan, Delivery Program and Operational Plan) a section on Asset Management. Included in this section of the plan are proposed asset sales. Sale of these specific lands has been identified in these plans since 2005.

These documents are publicly exhibited and subject to public meetings. Questions have been asked about the proposed sales at some of these meetings and to date not one submission has been received in respect of any proposed sale.

The development application is being assessed by an independent assessor prior to the receipt of the application and the application will be determined by the JRPP (Joint Regional Planning Panel) thereby ensuring both transparency and an ‘arm’s length’ approach by Council.

**We seek reassurance that Council has understood its responsibilities under relevant legislation for management of public land and has adhered to the requirements of all relevant legislation.**

**RESPONSE:**

Clearly these responses to your questions indicate that Council has not only understood its responsibilities, but more importantly complied with those responsibilities.

Councillors have been kept informed of progress in these matters and where necessary passed appropriate resolutions. As some of these were ‘commercial-in-confidence’ matters they were dealt with in closed Council. However, the Council resolutions must be adopted in ‘open’ Council and are therefore public documents (i.e. Council minutes).

While there was no legislative requirement to do so, Council notified the community of the ‘put and call option’ for a sale through the Mayors column, a press release and a Council newsletter article. No correspondence or enquiries resulted from these notifications.

As stated above the ‘sale’ has been negotiated on a ‘put and call’ basis so that it is not dependent upon approval of the DA. If the DA is refused the sale will still proceed. If the sale does not proceed, GSV lose their deposit and Council still has the land.

I am very comfortable that Council understands its responsibilities and the requirements of any legislation and you can be assured that this will continue to be the case.

If you have any evidence to the contrary please forward it to me for investigation.

You should also be aware of one other very relevant part of the Local Government Act (1993), regarding the functions of Council and its ability to undertake this significant opportunity for the whole community of Hunters Hill.

**“Section 22 Other functions**

A council has the functions conferred or imposed on it by or under any other Act or law.

**Note.** While the main functions of councils are provided for under this Act, councils also have functions under other Acts. An important general provision is contained in section 50 of the [*Interpretation Act 1987*](http://www.legislation.nsw.gov.au/xref/inforce/?xref=Type%3Dact%20AND%20Year%3D1987%20AND%20no%3D15&nohits=y) which provides, in part:

(1) A statutory corporation:

((d) may, for the purpose of enabling it to exercise its functions, purchase, exchange, take on lease, hold, **dispose of and otherwise deal with property**…**”**

Should you wish to discuss these matters further please do not hesitate to contact me via email genmanager@huntershill.nsw.gov.au, or telephone 9879 9430.

Yours sincerely



Barry Smith

General Manager

Copies of this response have also been provided to those persons who were cc’d in your correspondence:

The Hon. Don Page MP (Minister for Local Government)

The Hon Brad Hazzard MP (Minister for Planning & Infrastructure)

The Hon Anthony Roberts MP (Minister for Fair Trading and Member for Lane Cove)

Mr Ross Woodward CEO Division of Local Government (Department of Premier & Cabinet)

All Hunters Hill Councillors

Mr Richard Li (Gladesville Village Action Group)

Mr Russell Young (Gladesville Village Action Group)

Mr David Gaunt (Secretary Hunters Hill Trust)