

5. Pambula Pool Project

This report outlines action to date with the project and details the need for an agreement between Council and the Pambula Aquatic Centre incorporated community group (PACi) to formalise responsibilities and authorities for both parties. A Memorandum of Understanding (MoU) is considered warranted and a draft MoU is detailed in this report.

Acting Group Manager Infrastructure, Waste and Waste

BACKGROUND

10 The existing 25 m outdoor Pambula Pool is subject to a community based proposal to expand, enclose and operate the pool on a year round basis. PACi submitted a business plan in December 2008 that was subject to independent review, considered by Council in early 2009, then a development application which Council approved on the 16 June 2009. Council supported a successful Federal grant application for \$2.2 m. A project estimate of \$3,900,000 has been calculated by PACi and the scheduled commencement date for construction is December this year.

Development consent conditions have identified additional works/charges not envisaged in the PACi project estimate. The costs total approximately \$405,000 and include:

- 20 • Section 64 water and sewer headwork's charges of approximately \$135,000.00 (this is subject to a separate request for waiver or time payment).
- Access road and intersection treatment costs of approximately \$270,000

Therefore at this point the project cost is estimated to be \$4,305,000.00.

Funds raised for this project so far are shown in the following table.

Contributor	Amount
Community	\$550,000.00
BVSC	\$260,000.00
Federal Govt	\$2,200,000.00
State Govt.	\$150,000.00
Sub Total	\$3,160,000.00

Continuing community fund raising and volunteer labour/services	\$740,000.00
PACi total	\$3,900,000.00
Project estimate with consent conditions	\$4,305,000.00
Project Deficit	\$405,000.00

Council has resolved to support this project including a commitment to recurrent operational expenditure of up to \$80,000 per year, one off capital funds of \$260,000 and support for a funding application of \$2.2 m to the federal government.

30 Council had partnered PACi in the commissioning of an Economic Feasibility Study of the proposed Sapphire Aquatic Centre. The study by MacDonald International was presented to Council in March 2009. The report anticipated losses per year and recommended that in order to reduce those losses that “an *entrepreneurial approach must be taken to increase patronage rates and services offered*”.

It should be noted that a key element of the articulated PACi support and commitment to this project is based around implementing and further developing a considered “entrepreneurial approach” to community asset provision and management.

40 The pool is located within a crown reserve for which Council has responsibility. As part of the planning process for this project, comment from the Department of Lands has been obtained. The Department raised no objection to the DA being lodged and have advised that whilst supporting the project they will not accept any responsibility for the asset construction, operational or facility management now or into the future.

The Department indicated that prior to work commencing any “agreements” require their approval. Should the proposed MoU be adopted by Council it will be referred to the Department of Lands and the National Parks and Wildlife Service for their information.

50 In order for this project to commence a formal instrument of agreement between council and PACi is required. This will enable quotations to be sought for a consultant to prepare the necessary design, specification, schedule and construction drawings. The agreement model proposed is by way of a Memorandum of Understanding. The MoU will assist cooperation between the parties to maximise opportunity to finalise the project including securing additional capital funding if required.

The MoU calls for two contracts which provide the authority and responsibility for PACi to build the new pool and then, on issue of a certificate of occupancy, manage the facility on behalf of Council and the community.

The first contract is the Project Management Contract and it will set out in detail the requirements of BVSC for PACI to project manage the design and construction phase. The second contract is the Facility Management Contract. It will be a comprehensive agreement, intended to be capable of assignment, should the need arise. Both contracts will clarify the parties roles of assignment of risk.

60 The intent of this model is that BVSC retains control of the asset as Reserve Trust Manager. PACI takes on the role of authorised project manager reporting to Council during construction. Subsequently PACi become the facility manager reporting to Council on operational and asset management matters. Both roles will require a combination of direct and indirect assistance from Council in terms of operational and capital costs already committed and any governance requirements. The Facility Management Contract will require the annual submission of budgets, revenue forecasts and annual reports.

70 The pool is currently operated by a contractor under lease from Council. The lease is due to expire after the coming summer pool season. The current lessee has held the contract for the past 9 seasons. Discussions with the contractor in relation to this project coming 'on-line' have included provision for a short season option given the anticipated construction start date of mid December 2009 to meet Federal Government grant requirements. These discussions have included possible redeployment of the contractor to other areas of Council for the remaining term of their contract.

ISSUES

Legal

Preparation of the MoU and associated contracts has been subject to external legal advice. A copy of the draft has been discussed with PACi and is attached. The contracts that are provided for in the MoU are still to be finalised.

80 Environmental

The proposal features a passive solar design. While the passive solar design (a greenhouse in winter – open in summer) is applauded, there are few facilities in Australia which have employed this philosophy.

Asset

Creation of the new asset will incur additional asset management costs. The magnitude of these costs and necessary funding including alternative income remain unresolved until finalisation of the management contracts. Further discussion will be required to delineate maintenance obligations outside the pool perimeter (eg parking and access to facilities on the reserve).

90 **Social / Cultural**

This project enjoys significant local support and will add to the range of passive and active recreational activity on offer to residents and tourists.

Economic

Based on analysis of recent annual operating costs Council has resolved to provide an operational contribution of up to \$80,000 per year CPI adjusted.

Strategic

This project has potential to strengthen the shire's image as a quality life style and holiday destination. In converting an existing 6 lane outdoor pool to an 8 lane indoor pool, the range of aquatic activities and events can be extended year round.

100 **Consultation**

The relationship developed between Council and PACi demonstrates a comprehensive and effective level of cooperation.

Financial

Council funds are identified within current budgets. However in supporting this project Council should be mindful of the potential financial risk in the event of unforeseen project construction and operational costs.

Resources (including staff)

110 The project to date has essentially relied on considerable volunteer effort from PACi and Council staff time. The next phase of the project will demand the need for greater resources to be identified and made available. These resources may be through a combination of volunteer and or externally funded assistance. PACi have appointed a business manager to assist with administrative and community aspects of the project.

CONCLUSION

This project reflects not only community endeavour and vision, it is also aims to provide improved community asset and benefit through comprehensive planning and project scope.

120 The economic feasibility study indicated annual operating losses could be expected. However, PACi remain confident that this will not be the case and the only demand on Council will be to draw on the \$80,000 annual operating cost allowed for in recurrent budget.

The adoption of the proposed MoU is considered appropriate as it serves to articulate the common objectives and responsibilities of the community group and Council. It will also authorise PACi to take action and call for quotations for the design and project

construction management of the Sapphire Aquatic Centre in accordance with tendering and contract guidelines. This is the critical next step for this project.

RECOMMENDATION

That:

1. Council endorse the PACi business proposal presented to Council in December 2008 and considered in the context of the independent review in March 2009.
2. Council note the action to date by PACi to advance the Pambula pool project.
3. Council refer the draft MoU to the Department of Lands and National Parks and Wildlife Service for their information.
4. Council authorise the Mayor and General Manager to execute the attached MoU.

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7 July 2009

Attachment 1

MEMORANDUM OF UNDERSTANDING

made on day of 2009

BETWEEN Bega Valley Shire Council of Council Chambers, Zingel Place, Bega,
2550, in the State of New South Wales (“**BVSC**”)

140 and

Pambula Aquatic Centre Incorporated, ABN 61 286 126 114,
of 1/46 Golf Circuit, Tura Beach, 2548, in the State of New South
Wales (“**PACI**”)

WHEREAS

- A. BVSC is the Reserve Trust Manager of certain land R98164 known as the Pambula Sports Ground Reserve described as Lot 449, DP 720916 (the “Property”).
- B. BVSC owns and operates the existing Pambula Pool located on the Property.
- 150 C. The Project is the subject of development consent from BVSC being DA 2009.0089 and is mainly on the Property and partly on land being part of Ben Boyd National Park administered and controlled by the New South Wales Department of Environment and Climate Change.
- D. The Government of the Commonwealth of Australia has committed or proposes to commit the sum of two million two hundred thousand dollars (\$2,200,000.00) toward the cost of constructing the proposed upgrading of the Pambula Pool into a year round aquatic facility with associated services and facilities to be known as the Sapphire Aquatic Centre (the “Project”).
- 160 E. The purpose of this Memorandum is to facilitate cooperation between BVSC and PACI and provide an outline of the intended roles of each party in relation to the project construction and facility management.

IT IS AGREED

DEFINITIONS

1. In this document:

170 “**Authority**” means the Government of the Commonwealth of Australia and the Government of the State of New South Wales and their Authorities, Departments,

bodies and representatives, as well as the Bega Valley Shire Council and its Departments, bodies and representatives.

“**Business Days**” means a day which is not a Saturday, Sunday or public or bank holiday, in Sydney.

“**Facility**” The completed project to be known as the Sapphire Aquatic Centre

“**Project**” The design and construction of the facility to be known as the Sapphire Aquatic Centre.

INTENTION OF THE PARTIES

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2. Each party agrees to co-operate and act in good faith in using their best endeavours to comply with and implement this Memorandum.
 3. The parties acknowledge and agree that nothing in this Memorandum can or will confer, transfer or otherwise devolve any right, interest or title to PACI in the ownership of the Property or the Facility, the ownership and title of which will at all times remain with the Reserve Trust and the BVSC.

FURTHER AGREEMENTS

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4. This document is a Memorandum of Understanding and is not intended to create binding or legal obligations on either party. The details of the obligations of the parties will be set out in the following agreements:
 - a. Project Management Contract
 - b. Facility Management Contract

FINANCIAL CONSIDERATIONS

5. The parties acknowledge that all or any financial arrangements proposed must be negotiated and will depend upon the availability of funds.

ROLE OF THE PARTIES

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6. The parties intend that PACI, at its cost and subject to the terms of the Project Management Contract, will be responsible for:
 - (a) the final design and construction specifications for the Project;
 - (b) the construction of the Project; and
 - (c) satisfaction of the conditions of development consent

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210 7. The parties agree that they will collaborate to identify and seek any additional capital construction funding required subject to the terms of the Project Management Contract and will be responsible for:

(a) providing or causing to be provided the works referred to in:

- i. Condition 24;
- ii. Condition 62(b); and
- iii. Condition 63 (a), (b), (c), (d), (e) and (f)

220 of the development consent for Development Application No. 2009.0089 determined on 16 June 2009; and

8. The parties intend to enter into a Facility Management Contract in relation to the management and operation of the Facility.

9. The parties acknowledge that they may also be required to enter into a lease or licence arrangement in relation to the occupation of the land on which the Facility is located to satisfy the requirements of the Department of Lands and/or the Department of Environment and Climate Change as the relevant land owners or beneficiaries.

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TERM OF THE AGREEMENT AND TERMINATION

10. The term of this Memorandum will be the period of six (6) months commencing on the date of this Memorandum, or such other date as may be agreed between the parties unless the Memorandum is terminated earlier pursuant to paragraph 17 or is otherwise lawfully terminated, in which case the term of this Memorandum will expire on the date of such termination.

11. If either party forms a view acting reasonably that:

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(a) the other party is not acting in good faith; or

(b) the other party is not acting in accordance with the terms of this Memorandum; or

(c) the term of this Memorandum expires and the parties have not agreed on the terms and conditions or the Project Management Contract, the Facility Management Contract, lease or other instrument for and in connection with the design and construction of the Project or the day to day management and operation of the Facility

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then subject to paragraph 18, either party will be at liberty to terminate this Memorandum by notice in writing to the other party.

18. Before issuing a notice of termination under paragraph 17, the issuing party:

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- (a) must notify the other party in writing of its intention to do so setting out the reasons for the intended termination;
 - (b) will not exercise its right to terminate this Memorandum until after the expiry of the period of ten (10) Business Days commencing on the date the notice of intended termination is given; and
 - (c) during the period of ten (10) Business Days the other party may provide written comments to the party issuing the notice of intention.
19. If this Memorandum is terminated in accordance with the terms of this Memorandum then all obligations or responsibilities of the parties under this Memorandum cease.