

10.2.2.5. ECDEV - 25/10/2021 - Lake Wallace Memorandum of Understanding (MOU) Prepared by Andrew Muir - Director Economic Development and Environment

Department Economic Development & Environment

Authorised by Director of Economic Development & Environment

Reference

Min 20-268 – Ordinary Meeting of Council 23 November 2020
Min 21-207 – Ordinary Meeting of Council 27 September 2021

Summary

To present Council with a draft Memorandum of Understanding with Greenspot for the master planning and future tenure of Lake Wallace.

Commentary

Following advice to Council at its Ordinary Meeting of 27 September 2021 a draft Memorandum of Understanding (MOU) for the site has now been prepared. The MOU acknowledges both parties intention to:

- Consider potential opportunities for future development and use of the Lake Wallace Lands.
- Acknowledge the importance of Lake Wallace as a priority tourism destination.
- Explore other potential land uses that may enhance public and community benefits including tourism, recreational, commercial and residential uses and community facilities.
- Investigate options to maximise the beneficial uses of the Lake Wallace Lands, including as a priority tourism destination, and seek to agree on a proposed master plan for the Lake Wallace Lands.

As part of the MOU Greenspot will initially prepare a Masterplan and consult with the community. The MOU then contemplates potential rezoning (at Greenspots cost) and finalisation of future land management and tenure.

Policy Implications

Nil at this stage.

Financial Implications

- Budget approved - Nil
- Cost centre - N/A
- Expended to date - Nil
- Future potential impact - Nil anticipated

Legal and Risk Management Implications

No legal or risk implications are envisaged at this stage. Future land dealings and land use planning will be the subject of separate processes.

Attachments

1. DRAFT MOU Lake Wallace [2.2.5.1 - 8 pages]
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Recommendation

THAT Council note the draft Memorandum of Understanding (as attached) in respect of the Lake Wallace lands and authorise the General Manager to execute the MOU.

Lease means registered lease (AH861871) between Greenspot and Council in respect of the Lake Wallace Lands.

MOU means this agreement.

Proposal means a master-plan for future development and use of the Lake Wallace Lands which may then be implemented by Greenspot subject to all necessary Approvals being obtained.

Purpose means exploring the highest and best use of the Lake Wallace Lands including for public amenity and enhancing the area as a priority tourist destination for the locality.

Rezoning means an amendment(s) to the *Lithgow Local Environmental Plan 2014* required in order to facilitate the Proposal.

2. Purpose and term

The parties intend to cooperate and work together for a period of [6] months from the date of this MOU to identify, evaluate, assess and develop a strategy for the Proposal.

3. Good faith

During the term of this MOU, the parties intend to work together in good faith in relation to undertaking activities to achieve the Purpose.

4. Non-legally binding and survival of clauses

The parties acknowledge that this is a non-binding MOU and neither party is bound to proceed with any transaction or obligation contemplated by this document, other than the obligation to act in good faith pursuant to clause 3 and the confidentiality obligations in clause 16. The statements of intention set out in this MOU are not intended to be legally binding and:

- (a) are merely statements of the current intention of the parties and may change;
- (b) are not intended to be legally binding on the parties or to give rise to legal rights or obligations;
- (c) neither party intends to create, nor shall the statements in this MOU be construed as creating, a partnership of any form whatsoever between the parties; and
- (d) do not constitute a binding undertaking or representation concerning any future transactions, even if the parties subsequently work together and take action or refrain from taking action on the assumption or in the expectation that the relevant legal documentation will be executed.

5. Key benefits of the Proposal for the community

The parties consider that the Proposal has the potential to benefit the community by:

- (a) enhancing the Lake Wallace Lands as a priority tourist precinct in the locality;
- (b) creating additional areas for public and community recreation;

- (c) providing additional short-term and long-term accommodation and residential options in the locality;
- (d) increase local employment and other economic opportunities associated with the uses of the Lake Wallace Lands;
- (e) improving the infrastructure in the area;
- (f) improving safety and usability of Lake Wallace;
- (g) expanding uses to allow for greater capacity of the area to meet growing demand for tourism, recreation and accommodation in the area.

6. Process

The parties acknowledge that the Proposal may require investigation and implementation of some or all of the following legal processes, depending on the final Proposal selected by the parties:

- (a) Rezoning of the Lake Wallace Lands;
- (b) Approvals for the proposed development and use of the Lake Wallace Lands;
- (c) Surrender of the current Lease;
- (d) Transactions (including sale of land) or processes (including dedication of land) to facilitate ownership by Council of parts of the Lake Wallace Lands for community use;
- (e) Leasing of part of the Lake Wallace Lands to Council; and
- (f) Creation of public easements.

The parties acknowledge that the above list is not exhaustive and may change depending on the outcome of further studies and investigations conducted in relation to the Proposal.

7. Preparation of a master plan

Greenspot will, at its cost, prepare and/or procure:

- (a) a master plan for the proposed uses of the Lake Wallace Lands; and
- (b) any other relevant plans, drawings or impact assessments or other documents as reasonably required in connection with the Proposal,

within [3] months of the date of signing of this MOU.

8. Cooperation

Greenspot and Council will jointly:

- (a) coordinate consultations with Council officers, Councillors, key local interest groups, community members and any other relevant stakeholders in relation to the Proposal, as required;
- (b) obtain any land valuations as required for the Proposal including in respect of any proposed land transfers, dedications, leases or easements;

- (c) consult in good faith on the proposed master plan and any accompanying information prepared in accordance with clause 7 of this MOU;
- (d) within [3] months of completion of the master-plan under clause 7, seek to reach an agreement on the master-plan including by determining those areas which would be public areas and under the responsibility of Council;
- (e) consult and seek to reach agreement on the tenure that could be put in place for those lands that would be the responsibility of Council including but not limited to consideration of certain land being transferred or dedicated to Council, leasing of land to Council or a public access easement. The parties acknowledge that tenure arrangements may be considered by the parties as part of a planning agreement for the Rezoning and/or development of the Lake Wallace Lands.

9. Rezoning

Greenspot will be responsible for obtaining any Rezoning and all necessary Approvals required for implementation of any agreed master plan for the Lake Wallace Lands.

10. Information Sharing

The parties agree to use reasonable endeavours to share information and documents such as reports, assessments, plans, studies, correspondence and materials obtained for the purposes of this MOU. This obligation to share information does not extend to information prepared, received or held by Council in any regulatory capacity in which it would be inappropriate or unlawful to share information.

11. Costs

The parties will bear their own expenses and costs in connection with the preparation and execution of this MOU and the cooperation contemplated in this MOU.

12. Dispute

The parties will attempt to resolve any Dispute which arises expeditiously by negotiation between representatives of the parties who have authority to settle the Dispute.

13. No fetter

Nothing in this MOU is to be considered as fettering the proper exercise of statutory discretion of Council or any Authority.

14. Variation

This MOU can only be varied by written agreement of the parties.

15. Governing Law

This MOU shall be governed by and construed in accordance with the laws of New South Wales, Australia, and the parties irrevocably submit to the exclusive jurisdiction of the courts of New South Wales, Australia.

16. Confidentiality

The parties intend to share information in relation to the proposed activities on a confidential basis to the extent possible without breaching other confidentiality agreements or obligations and will in this regard negotiate in good faith in order to enter into a separate and legally binding confidentiality agreement or non-disclosure agreement governed by Australian law in respect of any confidential information to be disclosed. The parties intend to use shared confidential information only for the agreed purposes and not make use of that confidential information to the commercial, financial or competitive disadvantage of the other party.

17. Limitation of liability

17.1 Greenspot's limitation of liability

- (a) Greenspot enters into this MOU only in its capacity as trustee of the Trust and warrants that it has the power to do so.
- (b) Subject to clause 17.1(d):
 - (i) a liability arising under or in connection with this MOU (or the transactions contemplated by it) is limited and can be enforced against Greenspot only to the extent to which it can be satisfied out of property of the Trust out of which Greenspot is actually indemnified for the liability; and
 - (ii) the limitation in additional clause 17.1(b)(i) applies despite any other provisions of this MOU.
- (c) Subject to clause 17.1(d), no party shall:
 - (i) sue Greenspot in any capacity other than as trustee of the Trust;
 - (ii) seek to appoint or take any steps to procure or support the appointment of a receiver, a receiver and manager, a liquidator, a provisional liquidator, an administrator or similar person to Greenspot or prove in any liquidation, administration or arrangement of or affecting Greenspot (except in relation to property of the Trust);
 - (iii) enforce or seek to enforce any judgment in respect of any liability arising under or in connection with this MOU (or the transactions contemplated by it) against any property of Greenspot other than property held by Greenspot as trustee of the Trust.
- (d) The limitations in clauses 17.1(a), 17.1(b) and 17.1(c) do not apply to any liability of Greenspot to the extent that the liability is not satisfied because, under the constitution of the Trust or by operation of law there is a reduction in the extent of Greenspot's indemnification out of the assets of the Trust, as a result of Greenspot's fraud, negligence or breach of trust (involving its wilful default or lack of good faith).

17.2 Overriding provision

This clause 17 applies despite any other provision of this MOU or any provision of law or equity to the contrary.

17.3 Definitions

In this clause 17:

Trust means the Greenspot Wallerawang Unit Trust.

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SCHEDULE 1 – LAKE WALLACE AREA

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Execution

Signed for and on behalf of **Greenspot Wallerawang Pty Ltd** by its duly authorised representative in the presence of:

Signature of witness

Signature of authorised representative

Name of witness
(BLOCK LETTERS)

Name of authorised representative
(BLOCK LETTERS)

Signed for and on behalf of **Lithgow City Council** by its duly authorised representative in the presence of:

Signature of witness

Signature of authorised representative

Name of witness
(BLOCK LETTERS)

Name of authorised representative
(BLOCK LETTERS)