

G/3.1.5. RESPONSE TO DEPUTATION FROM BOYNE ISLAND TANNUM SANDS GOLF CLUB INC

Responsible Officer: General Manager Strategic Asset Performance

Council Meeting Date: 18 February 2020

File Ref: CM7.6

Purpose:

The purpose of this report is to provide Council with information relating to the issues raised in the Boyne Island Tannum Sands Golf Club Inc Deputation on 17 December 2019.

Officer's Recommendation:

That Council:

1. Note the actions taken to date with regards to Resolution G/19/3739 made on 16 April 2019;
2. Rescind previous resolutions G/16/2943 (20 December 2016), G/16/2815 (7 June 2016) and G/5.3.3 (17 July 2012); and
3. Request that officers present a further report to Council following the completion of the most appropriate use investigation for the Jacaranda Drive/Dennis Park sports complex.

Background:

Representatives of Boyne Island Tannum Sands Golf Club Inc ("BITS Golf") presented a deputation to Council on 17 December 2019 ("the Deputation"). During the Deputation BITS Golf raised the following issues:

1. The unsatisfactory condition and operation of the irrigation system
 - Council's obligations to maintain and repair the irrigation system;
 - The condition of the irrigation system and aging pipework; and
 - Irrigation outages experienced by BITS Golf.
2. Concerns with Council's intentions regarding the use of treated effluent at BITS Golf and surrounding sports precinct
3. Dissatisfaction with Council's April 2019 resolution
 - Inconsistency between Council's resolution of April 2019 and previous resolutions;
 - An alleged offer made by Council to BITS Golf which was accepted by BITS Golf by email correspondence; and
 - A "misunderstanding" regarding the Club's current financial position
4. Concerns for future land tenure for BITS Golf
 - What does "Officers investigate the most appropriate use of the land" actually mean?
 - Concerns with the function of the Property Acquisition and Disposal Specialist.

At the Deputation Council resolved "*That officers prepare a report to be tabled to Council by 18 February 2020 regarding the Deputation*" (vide resolution no. G/19/4020). This report is prepared in response to that resolution.

Options, Risk and Opportunity Analysis:

The issues raised by BITS Golf during the Deputation are addressed below.

1. The unsatisfactory condition and operation of the irrigation system

It is accepted by Council that the irrigation system within the BITS Golf lease area is reaching end of life and this has contributed to the current condition of the golf course. The condition of the golf course can also be attributed to drought conditions and outages of the treated effluent system (outside of the BITS Golf lease area).

At the time of the Deputation, the supply of treated effluent had just been restored to BITS Golf following an effluent system failure (outside of the BITS Golf lease area). Unfortunately, in January 2020 supply of treated effluent again was interrupted as a result of a blue-green algae bloom in the storage pond at the Tannum Wastewater Treatment Plant. At the time of writing this report, supply was yet to be restored.

Clause 5.9(5) of the Lease between Council and BITS Golf ("the Lease") provides that Council is responsible for the maintenance and repair of the Irrigation System within the BITS Golf lease area. In accordance with Clause 5.9(5), Council has for the duration of the Lease maintained and operated the Irrigation System at its cost.

During the deputation, BITS Golf referred to the mechanism in clause 5.9(5) of the lease whereby Council can recover the cost of repairs from BITS Golf if BITS Golf has damaged the irrigation system due to improper use, a deliberate act or negligence. To date there has been no allegations of improper use, a deliberate act or negligence on behalf of BITS Golf nor has Council sought to recover costs of repair from BITS Golf.

While the Lease places obligations on Council to repair and maintain the Irrigation System, Council's lease obligations do not extend to the replacement of the Irrigation System. Clause 4.3 of the Lease provides that Council does not warrant that the Premises are suitable for any purpose and further Clause 7.5 of the Lease provides that nothing in the Lease obliges the Landlord to reinstate the Premises.

Notwithstanding the provisions of the Lease, officers acknowledge that both the condition of the Irrigation System within the BITS Golf lease area and the operation of the larger treated effluent system does have a significant impact on BITS Golf's operations and members.

While the most recent Council Resolution in April 2019 (vide resolution G/19/3739) provides that Council will not contribute to the replacement of the Irrigation System within the BITS Golf lease area, as part of the investigation of the most appropriate use of the land, Council is undertaking the following works:

1. A detailed condition assessment of the existing Irrigation System;
2. An Environmental Condition Assessment on the condition of irrigated land and costed remediation plan (if required);
3. A review of Council's operation of the Irrigation System to identify improvements to current management of the asset; and
4. A fully costed (OPEX and CAPEX) redesign of an Irrigation System for BITS Golf Club.

This information ascertained from the most appropriate use assessment will allow both Council and BITS Golf to make an informed decision regarding an extension of the BITS Golf lease and the supply of effluent to BITS Golf beyond 31 December 2022.

Given the recent deputations to Council from not only BITS Golf but also Boyne Island Tannum Sands Soccer Club and most recently Boyne Tannum Cricket Club, the condition assessment and

associated works is being extended to the larger Jacaranda Drive/Dennis Park sports complex. All clubs that currently receive treated effluent have been recognised as key stakeholders and will be consulted throughout the process.

Aqueduct Consultancy were awarded the tender for the investigations. The work is scheduled to commence on 24 February 2020 with the works anticipated to be completed by 15 April 2020. Once investigations are complete, officers will be in a position to provide a further report with options for Council's consideration.

This approach is aligned with Council's corporate goal commitment to smart asset management.

2. Concerns with Council's intentions regarding the use of treated effluent at BITS Golf and surrounding sports precinct

During the Deputation, BITS Golf expressed strong support for the continued use of treated effluent to water the golf course and surrounding sporting fields. Officers agree that the treated effluent is a valuable resource and that the continued use of treated effluent is desirable. Council can however only supply treated effluent within the parameters of the available supply and the relevant Environmental Authority.

The environmental investigations to be undertaken at the Jacaranda Drive/Dennis Park sports complex as part of the most appropriate use assessment will assist Council to ensure that Council is meeting its regulatory obligations.

3. Dissatisfaction with Council's April 2019 resolution

Prior to Council's resolution in April 2019, Council had considered the replacement of the irrigation system on three occasions (17 July 2012, 7 June 2016 and 20 December 2016). On each occasion, resolutions were carried supporting the replacement of the irrigation system on various conditions. A conclusive agreement between the parties has not been reached.

At the Deputation BITS Golf produced correspondence from BITS Golf to a Council Officer of 8 December 2017 purporting to accept Council's offer for the replacement of the irrigation system. A copy of the initiating email from an officer to BITS Golf dated 25 September 2017 "*...taking a stab at where the discussions landed*" (discussion from a deputation to Council on 25 September 2017) is attached as Attachment 1.

It is notable that the terms outlined in the officer's email vary from the 20 December 2016 resolution and that the officer's email, rather than present an offer, makes the following request:
"...It would be appreciated if you could discuss my take on today's meeting (above) with your committee and let me know if the club is prepared to proceed on this basis? I will then be in a position to report to Council for a formal determination..."

While the Club did vote in favour of Council's proposal and so advised Council by email on 8 December 2017, for unknown reasons this particular proposal was not presented to Council for consideration. The replacement of the irrigation system was not brought back before Council until the most recent report on 16 April 2019.

With reference to the particulars of the proposal discussed at the meeting on 25 September 2017:

- The actual costs of the replacement of the Irrigation System is unknown and \$500,000 is likely to be insufficient;
- Council reserved its rights to not proceed with the project unless a satisfactory tender and affordable funding solution can be agreed between the parties;
- No funds were raised by BITS Golf to contribute to the replacement of the Irrigation System (noting that the proposal only required them to "make a genuine effort"); and

- The club has not restored usage opportunities of the licenced clubhouse for other BITS sporting clubs.

On this basis the ratification of the proposal discussed in September 2017 might not provide BITS Golf with any further certainty than Council's resolution of April 2019.

Council currently has three standing resolutions relating to the replacement of the irrigation system. In the interests of good governance, it is recommended, based on the reasons outlined in the officer's report *G/3.3.4 Consideration of the replacement of the Irrigation System within the Boyne Island Tannum Sands Golf Club Inc lease area* that all resolutions prior to 16 April 2019 are rescinded.

BITS Golf have also raised concerns over Council's "misconception" of BITS Golf's financial position. Officers acknowledge the financial information provided by BITS Golf during the Deputation indicating net assets of \$261,171. Officers accept this on its face value though it is noted that BITS Golf's true financial position can only be ascertained by a review of its full audited Financial Statements. Financial statements will be requested as part of Council's due diligence at the point of lease renewal or if the replacement of the irrigation system is to be considered before the expiration of the lease.

4. Concerns for future land tenure for BITS Golf

BITS Golf's tenure has been extended to 31 December 2022 and it is not recommended that Council consider an extension of that tenure until the most appropriate use investigations have been completed.

BITS Golf have expressed some concern around part of the April 2019 resolution, namely, that "... *Officers investigate the most appropriate use of the land.*" A most appropriate use assessment includes consideration of all the attributes relating to the land including land tenure, location, natural features, zoning, improvements, as well as past and current use. This is an approach that represents good due diligence and is being applied to all new allocations of land.

In this instance, the most appropriate use assessment will also include a condition assessment on the condition of the Irrigation System and an environmental assessment as outlined above.

BITS Golf also raised concerns with the report having been written by the Property Acquisition and Disposal Specialist. Whilst the position title is unusual, the Property Acquisition and Disposal Specialist's role is to essentially ensure that Council has access to the right land to match both Council's and the community's needs. These needs change over time and both the acquisition and disposal of land is necessary to ensure that Council's property portfolio is both relevant and sustainable. A key focus of the position is to assist Council to achieve a balance between community needs and the costs of delivering those needs. The Property Acquisition and Disposal Specialist has met with representatives of BITS Golf on two previous occasions.

Outcomes sought by BITS Golf

It was evident from the Deputation that there is a need to improve communication between officers and BITS Golf. To assist with this the Community Engagement team in consultation with BITS Golf and internal stakeholders will develop a Communication Plan to improve communication between the parties both in terms of the methods of communication, frequency and information to be provided.

Specific outcomes sought by BITS Golf from the Deputation and Council's proposed actions are outlined in Table 1 below:

Table 1.

Desired Outcome	Council Action
Dates are provided for Council's operational review and condition assessment of asset/facilities and review of Council's effluent reuse program and development of Council's Boyne Tannum Sewerage Asset Strategy.	Officers will provide BITS Golf with commencement and anticipated completion dates and will continue to update BITS Golf at regular intervals throughout the works.
A meeting to be held with all stakeholders to discuss what the abovementioned reviews relate to.	The Engagement and Partnerships team and the Project Manager will engage with the relevant stakeholders to provide information on the works. BITS Golf along with other occupants of Jacaranda Dr/Dennis Park sports complex have been identified as key stakeholders and will be consulted with throughout the various investigations.
The rescission of the April 2019 resolution and a new resolution to confirm the replacement of the irrigation system.	This is not recommended. Refer to details above.
The installation of a new irrigation system at Council's cost.	This is not recommended at this stage. Refer to details above.
A new lease to be granted to BITS Golf for a minimum term of 10 years with options thereafter.	BITS Golf currently have a lease to 31 December 2022. A further extension of the lease term is not recommended until the most appropriate use assessment is complete. Refer to details above.
The continued supply of treated effluent water to the course and surrounding sporting fields.	While this is a valid option, confirmation cannot occur until the relevant investigations and reports have been completed.

Communication and Consultation:

At the time of writing this report, a meeting was scheduled with BITS Golf and officers for 11 February 2020 to discuss issues raised in this report.

Legal Strategy and Policy Implications:

This report was prepared to address discrete issues raised by BITS Golf.

Legal and Policy implications associated with the replacement of the Irrigation System within the BITS Golf Lease Area were considered in the Report *G/3.3.4 Consideration of the replacement of the Irrigation System within the Boyne Island Tannum Sands Golf Club Inc lease area* and remain relevant if Council were to reconsider the replacement of the irrigation system.

Financial and Resource Implications:

The works being undertaken as part of the most appropriate use assessment are funded within the current operational budget.

Summary:

Nil.

Anticipated Resolution Completion Date:

It is anticipated that a further report could be presented to Council for Council's consideration by 30 September 2020.

Attachments:

1. Email correspondence from Council Officer to Clint Storch of BITS Golf dated 25 September 2017;
2. BITS Golf Irrigation System Resolutions

Tabled Items:

Nil.

Report Prepared by: Property Acquisition and Disposal Specialist