
ITEM NO	:	4.2
SUBJECT	:	BORONIA PARK SPORTS AND COMMUNITY FACILITY - BUSINESS CASE AND AGREEMENT FOR LICENCE BETWEEN HUNTERS HILL RUGBY UNION CLUB AND COUNCIL.
STRATEGIC OUTCOME	:	COUNCIL PROVIDES ACCESSIBLE SERVICES AND FACILITIES TO RESIDENTS OF ALL ABILITIES
ACTION	:	REVIEW THE USE OF OPEN SPACES, PARKS, RESERVES, PLAYGROUNDS IN LINE WITH DIAP, POMS AND COUNCIL'S ASSET MANAGEMENT PLANS
REPORTING OFFICER	:	MARIA KENNY

Ref:491713

PURPOSE

The purpose of this report is to:

- Provide the business case for the facility based on the NSW Integrated Planning and Reporting quadruple bottom line approach of assessing projects on economic, social, environmental and civic leadership criteria.
- Set out for Council's review, the Hunters Hill Rugby Union Football Club's requested use of the community facility, which would form the key terms and conditions for a future licence agreement between Council and the Club.
- Recommend the form of a future licence agreement, and provide a probity and governance framework for Council's consideration which seeks to mitigate any project risks that are set out in the attached business case.
- Provide an update on the progress of the facility design for the facility.

RECOMMENDATION

1. That Council receive and note the attached Business Case for the Sports and Community Facility at Boronia Park.
2. That Council review and resolve its acceptance of Hunters Hill Rugby Union Football Club's request for use proposed licence terms at a future facility, in consideration of its proposed capital contribution to the project.
3. That Council enter into an Agreement for Licence which sets out precedent conditions prior to entering into a Licence Agreement providing for an effective governance and probity framework for the duration of the project.
4. That Council note the progress on the preliminary concept designs.

BACKGROUND

At its meeting of 15 February 2021, Council considered a report on the planning and design of a proposed Sports and Community Facility at Boronia Park, where Council's resolution endorsed both the inclusion of a community room at the proposed facility, and the two-storey design concept option.

The report also considered the list of permissible uses and hours for a community room at the facility, noting it would not be available for hire beyond 11.00 pm, or on Sunday evenings, except with the express permission of Council.

Further, it was noted that Hunters Hill Rugby Union Club (HHRUC) are seeking a licence term of 20 years for the use of the community room based on the level of fundraising the Club intends to undertake to provide a financial capital contribution to the construction of the Council asset.

REPORT

Business case for construction of a community and sports facility at Boronia Park

Attachment 1 provides a detailed business for the project.

The project involves the construction of a two-storey Sporting and Community Facility at Boronia Park with project costs capped at \$3.1m (ex GST) from the following funding sources:

• NSW Stronger Communities grant	\$1,000,000
• Australian Government AusSport program grant	\$ 500,000
• Fundraising by Hunters Rugby Union Football Union Club	\$1,500,000
• Project Management Staff Costs provided by Council	<u>\$ 100,000</u>
	\$3,100,000

The Business case provides a recommended probity and governance framework to be implemented to minimise any future risks for Council.

The following table provides of summary of the business case key findings following application of the NSW Local Government Integrated Planning & Reporting Quadruple Bottom Line (QBL) approach for assessing community projects:

QBL Criteria	Expected Outcomes
Social	<ul style="list-style-type: none"> - Access and equity will be achieved through the provision of adequate accessible change rooms and compliant accessibility toilets. - The provision of community space on the second floor provides an additional community space for hire to undertake indoor sporting, recreational and cultural activities.
Environmental	<p>The project's architectural design brief has included the provision and design of the following sustainability initiatives:</p> <ul style="list-style-type: none"> - Water and energy efficiency - including use of grey water for toilet flushing; rain water capture and use energy efficient electrical facilities and lighting; energy efficient heating, ventilation and air handling. - Passive design options at low cost, with the use of lightweight and contemporary construction materials.
Civic leadership	<ul style="list-style-type: none"> - There has been extensive community engagement regarding this proposal with sporting groups, schools, local community groups and the wider community. - A probity and governance framework has been defined through an Agreement for Licence. This Agreement defines the conditions that are required to be met with regards to fundraising by HHRUFC, and the provision of a future licence agreement with HHRUFC prior to construction commencing of the community and sporting facility at Boronia Park.
Economic	<ul style="list-style-type: none"> - Council will be required to fund an additional \$37,738 for annual maintenance and upkeep of the facility. This projection includes an estimate of potential hire fee income that offsets operating expenses. - Projected income has been calculated net of hours available deducting HHRUFC request of use. This figure assumes an occupancy rate of 15%. Break-even costs would be achieved at approximately 35% occupancy rate.

Proposed terms for a future licence between HHRUFC and Council

The granting by Council of a licence is expressly permitted in the Plan of Management for Boronia Park.

The Local Government Act provides that a council must not grant a lease or licence for a period (including any period for which the lease or licence could be renewed by the exercise of an option) exceeding 21 years.

If a council proposes to grant a licence of community land for a period (including any period for which the lease or licence could be renewed by the exercise of an option) exceeding 5 years, it must:

- a) give public notice of the proposal; and
- b) exhibit notice of the proposal on the land to which the proposal relates; and
- c) give notice of the proposal to such persons as appear to it to own or occupy the land adjoining the community land.

To off-set the intended financial capital contribution to be provided by the Club through its fundraising activities, HHRUFC have requested a licence term of 20 years. Licence terms would include payment of a peppercorn licence fee, plus proportionate share for the recovery of outgoings such as electricity and cleaning costs.

The tables below set out the:

- Club's request for the use of the future community space for the proposed term of the licence period; and the
- remaining times that the community room would be available for Council to hire.

Days of the week	Hunters Hill Rugby Union Football Club request - In-season Use (1st April – 31st August)	Remaining times available for hire to general community
Monday		Weekday rate - 9am to 5pm Weekday evening rate - 5pm to 10pm
Tuesday	Tuesday evenings (5pm – 9pm)	Weekday rate - 9am to 5pm
Wednesday		Weekday rate - 9am to 5pm Weekday evening rate - 5pm to 10pm
Thursday	Thursday evenings (5pm – 9pm)	Weekday rate - 9am to 5pm
Friday	Friday evenings (5pm – 10pm) subject to Juniors match draw. Unrequired dates to be returned to Council's control, dates to be determined by 1st April each year.	Weekday rate - 9am to 5pm
Saturday	All day (7.30am – 10pm) subject to Juniors and Seniors match draws. Unrequired dates to be returned to Council's control, dates to be determined by 1st April each year (10 of 22 evenings throughout season)	Weekend evening rate – for remaining 12 unused evenings.
Sunday	Sunday (7.30am – 6pm) Subject to Juniors and Seniors match draws. Unrequired dates to be returned to Council's control, dates to be determined by 1st April each year	

In addition to the above time, the Club have also requested the community room be available for:

- Friday or Saturday evening (5pm – 10pm) – up to 4 dates in addition to the above for fundraising/social events. Dates to be determined by 1st April each year.
- Mid-week evenings (6pm – 10pm) for monthly meetings for Board, sub-committees and special committees.

Days of the week	Hunters Hill Rugby Union Football Club request - Off- season Use (1 September – 31 March)	Remaining times available for hire to general community
Monday		Weekday rate - 9am to 5pm Weekday evening rate - 5pm to 10pm
Tuesday		Weekday rate - 9am to 5pm Weekday evening rate - 5pm to 10pm
Wednesday		Weekday rate - 9am to 5pm Weekday evening rate - 5pm to 10pm
Thursday		Weekday rate - 9am to 5pm Weekday evening rate - 5pm to 10pm
Friday (limited to 1 date)	Friday (11am – 6pm) – special date for Club Season Launch (Mar/April - daytime function). Date to be determined by 1st January each year	Weekend day rate - 9am to 5pm – Weekend evening rate - 5pm to 10pm (minus 1 date for fundraising event)
Saturday (limited to 10 dates)	Saturday (or Friday evening) - 5pm to 10pm. Up to 10 dates for fundraising/presentation/social events. Dates to be determined by 1st June each year.	Weekend day rate - 9am to 5pm Weekend evening rate - 5pm to 10pm (minus 10 dates used by the Club)
Sunday		9am to 5pm – Weekday rate

In addition to the above time, the Club have also requested the community room be available for:

- Mid-week evenings (6pm – 10pm) – Monthly meetings for Board, sub-committees and special committees. Dates to be advised with advanced notice to allow flexibility to facilitate Council hiring to other groups and/or general public.

Community consultation – Community room availability to be limited to 10pm

During the course of planning for the new Sporting and Community Facility, the following community consultation has occurred:

- 1 December 2020 – Sporting User Groups Stakeholders Meeting to commence discussions and scoping of the user requirements;
- 9 December 2020 – Meeting with residents from Park Road and nearby who responded during the Boronia Park Plan of Management engagement process.
- 10 December 2020 – Meeting with the Hunters Hill Trust, Flora and Fauna Society and Bushcare.
- 27 January 2021 – Combined stakeholders meeting (sporting user groups, residents, Hunters Hill Trust, Flora and Fauna Society and Bushcare).
- 16 February 2021 - Third Sports User Groups Stakeholders Meeting
- 3 March 2021 - Fourth Sports User Groups Stakeholders Meeting
- 26 March 2021 – General community consultation session held on a Saturday at Boronia Park.
- Councillor Briefing sessions were also held on 7 December 2020, 1 February 2021, 8 March 2021 and 29 March 2021.

Council's standard closing time for hire of its community halls is 11pm. As a result of community feedback, it is recommended that the hours of use for this facility be limited to 10pm for any licensee (or casual hirer), with a short layover period to clean the facility. Further it is proposed to limit the usage of the facility in the evenings. It is proposed that the facility will not be available for hire by individuals for private celebrations such as weddings, birthdays etc. after 5pm.

Legal advice regarding probity and governance frameworks

As discussed in the attached business case, one of the key risks of this project is the construction of the facility commencing prior to fundraising targets being reached, thereby requiring Council to provide an unplanned financial contribution, which is over and above the ongoing annual operating costs to maintain the facility.

To mitigate this risk, Council's legal counsel has recommended that HHRUFC and Council enter into an Agreement for Licence. **Attachment 2** sets out the draft Agreement which serves to mitigate project risks by defining obligations regarding precedent conditions prior to the construction of a future facility.

The granting of a future Licence would be conditional upon the following conditions precedent being satisfied by the sunset date (24 months following the signing of the Agreement to Licence):

- a) The Licensor securing Development Approval on terms acceptable to the Licensor.
- b) The completion of the construction of the Building demonstrated by the issuing of an occupation certificate issued pursuant to the provisions of the *Environmental Planning and Assessment Act 1979*.
- c) The Licensee obtaining funding to secure its obligations to make the capital contribution under the licence. HHRUFC is required to make a capital contribution towards the cost of constructing the Facility (to be paid to the Council as part of the consideration of Council granting a Licence Agreement to the Club for its part use of the Facility).

Furthermore, with respect to implementing a sound probity framework, the draft Agreement stipulates:

- The Club warrant to ensure sound governance practices are adopted with respect to any fundraising activities that it engages in in connection with its obligations to make the capital contribution, and that it will ensure that any promotion of its fundraising activities clearly articulates the purpose for which funds are being raised are being undertaken solely by the Club and that the Council does not have any direct involvement in those fundraising activities.
- Council's only role is receiving the funds to be paid by the Club to the Council as required by the Club. The Club is not raising funds on behalf of Council. It is raising funds for its own benefit, identified as the ability by the Club to secure the future use of parts of the Facility.

Next steps – Public exhibition of draft Licence Agreement

Council is continuing to discuss with the Club the final draft terms and conditions of a future licence agreement, which will include respective review options for both parties. Once this process has been finalised, a further report will be tabled to Council for its endorsement to proceed to public exhibition.

Next steps – Progress designs

At **Attachment 3** are the progress designs for the facility. It is planned to continue design development with the intent of submitting the design package to Council in May in order to seek Owners Consent to lodge the Development Application.

CONCLUSION

Boronia Park with 3 playing fields and 3 netball courts is the main district sportsground in the Municipality and services both Hunters Hill residents and those from the wider area. The sports precinct at Boronia Park needs facilities that support its use. The planned sporting and community facility is for the benefit and use of the wider community, for district sports clubs, nearby schools and other community groups.

This project supports the delivery of action PDFL32 in the adopted Boronia Park Plan of Management.

FINANCIAL IMPACT ASSESSMENT

There is no direct financial impact on Council's adopted budget for FY2020/21 as a result of this report.

ENVIRONMENTAL IMPACT ASSESSMENT

There is no direct environmental impact on Council arising from Council consideration of this matter.

SOCIAL IMPACT ASSESSMENT

There is no direct social impact on Council arising from Council consideration of this matter.

RISK ASSESSMENT

There are no direct or indirect risks impacting on Council arising from consideration of this matter.

ATTACHMENTS

1. Business Case
2. Draft Agreement for Licence
3. Design Concept as at April 2021