

City of Tea Tree Gully

COUNCIL MEETING

14 JUNE 2022

NOTICE OF MOTION

Rescission Motion - Unsolicited Proposal - Rafnix Pty Ltd (Supashock) - 13 and 21-27 Valiant Road, Holden Hill D22/42148

I, Cr Rob Unger, give notice of my intention to move the following motion at the next Ordinary Meeting of the Council Meeting of the City of Tea Tree Gully:

The recommendations below should be considered as two separate motions:

Rescission Motion

That having considered resolution 1190 from the Council meeting held on 12 April 2022, Council rescinds the resolution:

“That Council resolves to:

- a. ***Provide “in principle” support to proceed with the potential lease of Allotment 16 in D9917 in Certificate of Title 5274/794 and Allotment 22 in D9918 in Certificate of Title 5274/798 of O-Bahn Linear Park South located at 13 and 21-27 Valiant Road, Holden Hill, as identified in Attachment 1 of the report titled “Unsolicited Proposal – Council Reserve – 13 and 21-27 Valiant Road, Holden Hill,” and dated 12 April 2022, pending the outcome of negotiations with Rafnix Pty Ltd.***
- b. ***Authorise the Chief Executive Officer to enter into a Deed of Undertaking with Rafnix Pty Ltd for the recovery of Council’s costs associated with the Community Land Management Plan amendment and drafting of a lease agreement for the land identified in Attachment 1 of the report titled “Unsolicited Proposal – Council Reserve – 13 and 21-27 Valiant Road, Holden Hill,” and dated 12 April 2022.***
- c. ***Authorise the Chief Executive Officer to prepare a lease agreement for the portion of O-Bahn Linear Park South identified in Attachment 1 of the report titled “Unsolicited Proposal – Council Reserve – 13 and 21-27 Valiant Road, Holden Hill,” and dated 12 April 2022, having negotiated the proposed terms with Rafnix Pty Ltd, and to present the draft agreement for Council’s further consideration.***

- d. *Request the Chief Executive Officer to prepare a Community Engagement Strategy for the statutory consultation required under sections 198 and 202 of the Local Government Act 1999 for the amendment to the Community Land Management Plan and long-term lease of the land identified in Attachment 1 of the report titled “Unsolicited Proposal – Council Reserve – 13 and 21-27 Valiant Road, Holden Hill,” and dated 12 April 2022, and to present the strategy to Council for further consideration.*
- e. *Request the CEO to consult with SA Water regarding their requirements prior to a Community Engagement Strategy being presented to Council for consideration.”*

New Motion

That Council:

1. Proceeds with Community Engagement for:
 - a. the potential disposal and
 - b. potential short term **lease or a permit under Council’s Local Government Land By-Law No. 3 of Allotment 16 in D9917 in Certificate of Title 5274/794 and Allotment 22 in D9918 in Certificate of Title 5274/798 of O-Bahn Linear Park South located at 13 and 21-27 Valiant Road, Holden Hill, as identified in Attachment 1 of the report titled “Unsolicited Proposal – Council Reserve – 13 and 21-27 Valiant Road, Holden Hill,” and dated 12 April 2022, and**
 - c. a variation to amend the Community Land Management Plan for Holden Hill as set out in Attachment 4 of this Notice of Motion **entitled “Rescission Motion - Unsolicited Proposal - Rafnix Pty Ltd (Supashock) - 13 and 21-27 Valiant Road, Holden Hill” and dated 14 June 2022.**
2. **Authorises Council’s Chief Executive Officer to enter into a Deed of Undertaking with Rafnix Pty Ltd (Supashock) for the recovery of Council’s costs associated with the disposal of the land and the drafting of a lease agreement or permit (if required) for the land identified in Attachment 1 of the report titled “Unsolicited Proposal – Council Reserve – 13 and 21-27 Valiant Road, Holden Hill,” and dated 12 April 2022.**
3. Adopts the Community Engagement Strategy for the statutory consultation required under sections 194, 198 and 202 of the Local Government Act 1999 for the potential disposal of the land, amendments to the Community Land Management Plan and short term lease of the land or a Permit under **Council’s Local Government Land By-Law No 3 as identified in Attachment 1 of the report titled “Unsolicited Proposal – Council Reserve – 13 and 21-27**

Valiant Road, Holden Hill,” and dated 12 April 2022. The proposed Community Engagement Strategy is attached as Attachment 3 to the Notice **of Motion titled “Rescission Motion - Unsolicited Proposal - Rafnix Pty Ltd (Supashock) - 13 and 21-27 Valiant Road, Holden Hill D22/42148” and dated 14 June 2022.**

4. **Notes that Council’s CEO has commenced consultation with SA Water** regarding their requirements for access over their easement on the land.
5. Accepts that should this land transfer proceed after Community Engagement, the agreed value for the land and lease will be as provided by an independent valuation obtained by Council.
6. Requests the carpark plan as per Attachment 1 of this Notice of Motion **titled “Rescission Motion - Unsolicited Proposal - Rafnix Pty Ltd (Supashock) - 13 and 21-27 Valiant Road, Holden Hill D22/42148” dated 4 June 2022 be amended to the satisfaction of Council’s Chief Executive Officer**, prior to being released for Community Engagement, to incorporate further landscape and Water Sensitivity Urban Design elements.

Background

Council resolved on the 12th of April 2022, to provide in principle support, and commence the community engagement process for the leasing two parcels of land located on Valiant Road, Holden Hill. Council also resolved to authorise the CEO to enter into a Deed of Undertaking with Rafnix Pty Ltd, and prepare a lease agreement.

On the 31st May 2022, Elected members were provided with the opportunity to meet with Oscar Fiorinotto (Founder & CEO) and Len Piro (Advisory Board Member) at Supashock’s head office in Holden Hill. During this site visit, Elected members were able to see firsthand the current facility, hear the history of the company, and their plans for the future.

Supashock has a current workforce of more than 100 employees, with this figure expected to double within the next three years. The Supashock workforce comprises highly skilled engineers and tradespeople, developing products for Global Defence Primes, Autonomous Vehicles and is a Tier one supplier to Automotive OEM’s.

Supashock currently exports 65% of its technology and products overseas, and is seeking to expand on this. In late 2021 Supashock announced they will be providing the running gear components and technology for Rheinmetall’s Infantry Fighting Vehicle (IFV). They have also recently been contracted to develop, design, and manufacture the suspension system for a major international company in their manufacturing of autonomous vehicles.

To allow for this growth, Rafnix and Supashock are planning to undertake a \$6.5M development to their site in Holden Hill. Increasing their footprint, and allowing for design, manufacturing, and testing to occur, in a state-of-the-art facility.

As has been previously identified, for this development to occur, additional carparking is required. Unfortunately, there are a limited opportunities within the area to develop the required car parking needed.

While a lease of the two sites provided a number of benefits to Council, it does not provide Rafnix and Supashock with the level of confidence needed. Without a new motion it is likely to put at risk this largescale investment, and the subsequent job creation and economic benefits that it will bring. This new motion seeks to engage with the community on the potential disposal of 13 and 21-27 Valiant Road, Holden Hill.

If following community engagement, Council was to resolve to revoke the land, it would be my intention to seek the inclusion of a Land Management Agreement or Caveat, that would ensure that these parcels of land, are used for carparking, and not sold or repurposed without first engaging with Council. I will also be seeking the inclusion of some form of buy back clause, should Supashock opt not to proceed with their expansion, or were to cease operations within Holden Hill.

Supashock is a very specialised business, employing a skilled and highly educated workforce. We should be extremely excited to see this kind of business operating within the City of Tea Tree Gully, and we should be doing as much as possible to support them.

*Cr Rob Unger
Balmoral Ward
6 June 2022*

City of Tea Tree Gully

COUNCIL MEETING

NOTICE OF MOTION

CEO COMMENTS

Rescission Motion - Unsolicited Proposal - Rafnix Pty Ltd (Supashock) - 13 and 21-27 Valiant Road, Holden Hill D22/42148

Policy

The land under consideration is identified as:

- ☒ Allotment 16 in D9917 in Certificate of Title 5274/794 (13 Valiant Road, Holden Hill) and
- ☒ Allotment 22 in D9918 in Certificate of Title 5274/798 (21-27 Valiant Road, Holden Hill).

The proposal by Supashock is for the construction of a carpark across both parcels of land. Refer Attachment 1.

Both land parcels are classified as community land pursuant to the Local Government Act 1999 (the Act) and dedicated as “Reserve” on the Certificates of Title. More information regarding the site is set out in the Council Report titled “Unsolicited Proposal – Council Reserve – 13 and 21-27 Valiant Road, Holden Hill” dated 12 April 2022, and is included as Attachment 2.

An evaluation against the Principles of Consideration set out in *Council’s Unsolicited Proposals Policy* and the *Disposal of Land and Assets and Acquisition of Land Policy* was included in the Council Report in Attachment 2. Each evaluation considered both the potential disposal and potential lease of the land.

Option 1 - Revocation process – community land classification

Prior to disposal (sale) of community land the community land classification must be revoked in accordance with the statutory procedure set out in Section 194 of the Act. The steps include:

- 1) Prepare and make publicly available a report on the proposal to revoke the classification. The report must contain all of the following:

- a. A summary of the reasons for the proposal
 - b. A statement of any dedication, reservation or trust on the land
 - c. A statement of whether revocation of the classification is proposed with a view to sale or disposal of the land
 - d. Details of any Government assistance received by Council to acquire the land
 - e. A statement of how the Council proposes to use the proceeds
 - f. An assessment of how implementation of the proposal would affect the area and the local community.
- 2) Council must follow the relevant steps set out in its public consultation policy.
 - 3) After complying with the above the Council must submit to the Minister the proposal with a report on all the submissions received during the community engagement process.
 - 4) If the Minister approves the proposal the Council then needs to resolve to revoke the community land classification of the land.
 - 5) The revocation of the community land classification has the effect of removing the “Reserve” dedication. Further to the above steps and contingent upon the outcome of the community engagement process and subsequent Ministerial approval, the Council must then notify the Registrar-General who will make the appropriate amendments to the titles or other public record to remove the dedication.

If Council resolves to proceed with the proposal, it will need to undertake community engagement first. A proposed Community Engagement Strategy is provided in Attachment 3.

Option 2 - Alienation of community land by lease or licence

The Local Government Act 1999 sets out the parameters for granting a lease or licence over community land. In almost all cases Council must follow the relevant steps set out in its public consultation policy.

The exception to this requirement is where the lease or licence is authorised in an approved Community Land Management Plan and the term of the lease or licence is for five years or less. There are also certain exemptions to the requirement for community engagement set out in the Local Government Regulations however these are generally applicable to proposals or projects by Commonwealth or State Government entities.

As the proposal for a car park for the two parcels (identified as O-Bahn Linear Park South) is not currently envisaged within the Holden Hill Community Land Management Plan, community engagement would be required to amend the Community Land Management Plan for the site prior to granting an approval for use of the land for a carpark.

A lease or licence may be granted for a term not exceeding 42 years which may be consecutive or an extension of one or more shorter lease terms. A new lease or licence may be granted at the expiration of 42 years.

Option 3 - Permit under By-law 3 – Local Government Land

Item 4 within “By-law 3 – Local Government Land” sets out the activities that are permitted on Local Government Land where a person must obtain Council’s permission.

Administratively the permission is provided through the granting of a permit for short term uses, generally by staff with relevant delegation. An example of this scenario is a permit issued to a utility company requiring a small section of a Council-owned car park to set up for the installation of new infrastructure, usually for a relatively short period of time.

Activities requiring permission as set out in Items 4.4.2 and 4.4.3 within By-Law 3 include:

4.4.2 erecting or installing a structure (including pipes, wires, cables, pavers, fixtures, fittings and other objects) in, on, across, under or over the land; or

4.4.3 changing or interfering with the construction, arrangement or materials of the land;

Irrespective of whether Council chooses to grant a lease or permit, both will require community engagement to amend the O-Bahn Linear Park South section of the Community Land Management Plan: Holden Hill. A draft amended Community Land Management Plan is provided in Attachment 4.

Planning Assessment

On 26 April 2022, Council received an application for Planning Consent from Woolcock Construction (on behalf of Rafnix) for alterations and additions to a Manufacturing and Office Building at the Supashock premises at 2-6 Ardtornish Street, and to establish a car park and removal of Regulated Trees at 13 and 21-27 Valiant Road (the Council reserve site). This application has not yet been formally lodged as the application fees are still outstanding. Following payment of the fees, the planning assessment can commence.

A planning consent under this section 107 of the Act will apply subject to conditions imposed under this Act and prescribed by the regulations or the Planning and Design Code. In this instance the development costs have been identified as \$6,500,000.

The subject sites include three (3) non-contiguous allotments commonly known as 2-6 Ardtornish Street and 13 and 21-27 Valiant Road, Holden Hill. 2-6 Ardtornish Street currently supports a single storey manufacturing building with an associated two (2) storey office building to the north. 13 and 21-27 Valiant Road is currently a Council reserve that supports a number of mature and recently planted trees. 2-6 Ardtornish Street (the manufacturing

site) has a size of 1.3 hectares, while 13 and 21-27 Valiant Road (the Council reserve site) is approximately 3,200 square metres in size combined.

The proposed land use of the manufacturing at 2-6 Ardtornish Street will be unchanged as a result of the development. Light industry will remain the primary land use, with associated offices and car parking.

The proposed alterations and additions on site at the main Supashock site can be summarised as follows:

- A total of 5,450 square metres of additional manufacturing space is proposed:
 - ☒ Building A: 3,530 square metres; and
 - ☒ Building B: 1,920 square metres.
- Use of current office space, totalling 770 square metre gross useable floor area, for workshop in support of manufacturing.
- Demolition of two-storey office building, totalling 700 square metres gross usesable floor area.
- New two-storey office building providing 1,050 square metres gross usesable floor area.
- Removal of one regulated tree
- Reduction in onsite car parking to 34 spaces

The application seeks to establish a 109-space car park and removal of 8 Regulated Trees at 13 and 21-27 Valiant Road (the Council reserve site). A 1.8m high perimeter fence is to be installed, Colorbond acoustic to the southern border and chainmesh to the western and northern borders.

Public Notification for Planning Consent

The sites lie within the Employment Zone and are located approximately 40 metres to the south of the Suburban Activity Centre Zone and General Neighbourhood Zone. The proposed development will require public notification given its proximity to the adjoining residential zones. An owner or occupier of each piece of adjacent land and members of the public may make representations to the relevant authority in relation to the granting or refusal of planning consent.

Relevant Authority

The Council Assessment Panel (CAP) endorsed the original set of delegations under the Planning, Development and Infrastructure Act 2016 ('the Act') at its 16 February 2021 meeting.

These delegations reflect the scope of the CAP as a relevant authority under the Act, and includes sub-delegation of certain matters to the Assessment Manager.

The Act in itself does not anticipate delegation from the Assessment Manager to the CAP, so further instruments of delegation are necessary where, in special circumstances, the Assessment Manager has determined that the matter needs to be considered by the CAP.

Ordinarily, this application is to be assessed with the Assessment Manager as the relevant authority if no representations are received, however the Panel will be requested to accept the delegation for the application as it is considered to be of political interest. In particular:

- Council is the land owner of 13 and 21-27 Valiant Road, Holden Hill (the Council reserve site) which forms part of this development.

It is considered prudent for the matter to be assessed by the CAP as an assessor independent of the Council.

Development Authorisation

As subject sites include three (3) non-contiguous allotments commonly known as 2-6 Ardtornish Street and 13 and 21-27 Valiant Road, Holden Hill, Planning staff will need to give consideration how the proposed carpark will remain associated with the proposed development at 2-6 Ardtornish Street.

Council's understanding and expectation would be that the use of the reserve is to be conditional on development of this proposal outlined by Rafnix. It is recommended that in order to mitigate potential risks of the land being used for purposes other than this proposal, special conditions of contract for sale should be pursued to ensure the development of the land proceeds as proposed, and to ensure that if the development does not proceed in accordance with Council's agreed expectations, the land will revert back to Council's ownership without financially disadvantaging the Council.

Risk

Elected Members visited the Supashock site on Tuesday 31 May 2022 to hear first-hand from the Chief Executive Officer of Supashock, Mr Oscar Fiorinotto of the development of the company and its future direction.

There is a risk in being able to finalise any community land revocation process within the caretaker period which is why the options of a short-term lease or a permit are being put on the table i.e. to allow the short-term development of the carpark until the Minister endorses the revocation proposal, should it advance to that stage.

Some concerns have been raised about the ability to link this proposal with the main site of Supashock at 2-6 Ardtornish Street, Holden Hill. Advice has been sought and it is summarised as follows:

Sale

In the event that Council goes down the path of revoking the community land status of the Carpark Land and selling it to Supashock, then the first thing we would note is that it will not be possible to restrict Supashock from selling the Carpark Land in the future once they own it freehold.

However, there are ways that Council can achieve its desired outcome of stopping Supashock from subsequently disposing of the Carpark Land to a third party and compromising the planning approval for the Supashock Land.

Firstly, as you have pointed out Council could negotiate an option to purchase to be granted to Council at settlement. This would be done by the parties entering into a separate deed that is executed contemporaneously with the subject contract of sale. The deed would set out that if Supashock ever wished to dispose of the Carpark Land, Council would have the first option to purchase the land on agreed terms (usually for market value). The contract of sale for the disposal of the Carpark Land would reference this deed. The deed would be drafted in such a way that the option only triggers if Supashock is looking to dispose of the land (they would need to notify Council).

In order to protect the right granted under the deed, Council would lodge a caveat on the subject title at the time of settlement (the option to purchase is a caveatable interest) – this would also be a special condition under the Contract of Sale. That way, Supashock would not be able to dispose of the land before first dealing with the caveat on title.

Strictly speaking the above method does not connect the Carpark Land and the Supashock Land, but it does achieve what Council is trying to achieve. The disadvantage with it is that Council has no control of the timing and could find itself in a position where purchasing the land has not been budgeted for and is not palatable to the council at that point in time.

In addition and for an added layer of security, Council could arrange for an encumbrance or Land Management Agreement (LMA) to be registered on the Carpark Land at settlement. An LMA (essentially a form of encumbrance) pursuant to the Planning Development and Infrastructure Act 2016 is appropriate here as it relates directly to the development and management of the land given the Carpark Land is linked to the DA for the Supashock Land. Alternatively an encumbrance could be registered on the title as part of the sale.

Either an encumbrance or LMA would restrict the future use of the Carpark Land, and once registered on title would run with the land and bind any future owners of the Carpark Land.

The encumbrance or LMA would be drafted similarly to the Permitted Use described for the lease above, i.e. the Carpark Land must be used for the purpose of overflow carparking for the site located at 2-6 Ardtornish St, Holden Hill SA 5088.

By also registering an encumbrance or LMA on title, Council would be ensuring that it retains control over the use of the Carpark Land if somehow Supashock were able to dispose of it to a third party without Council's consent or first option (highly unlikely).

The above is a high level overview of options to Council, all of which would require carefully drafted legal documents to give effect to them.

It is the recommendation of these comments that should Council support the sale of the land after Community Engagement then both options should be pursued jointly by Council to ensure the desired outcome is met. That is:

1. A Deed – to ensure Council has a buy-back option. This is reasonably flexible but is subject to Supashock accepting such a Deed. The buy-back option could take many forms but one that comes to mind is:

- ☒ If Supashock ceases operations on their primary site of 2-6 Ardtornish Street, Holden Hill then Council has the option to buy back the land for a \$1 in the first 5 years and then after 5 years it could be at Market value or increasing to market value over a period of time. This would ensure the land is used for its intended purposes or it reverts back to Council. If it was to revert back to Council's ownership, Council would have the option to leave it as a public car park for the industrial area or require Supashock return it back to open space.

2. A Caveat – a tool that ensures the Deed has to be dealt with prior to the land being disposed of.

The Advice also mentions the Land Management Agreement (LMA). This is a tool that Council could use to ensure the car park land is linked to Supashock's primary site. This is something that Council would implement at the time of approving the car park and the approval for the loss of car park and increase in operations on the primary site. This is to be addressed when any development approval is being considered.

The options of deeds, caveats and LMAs are not required to be dealt with now prior to community engagement, only something for Council to be aware of as options should Council resolve to proceed after community engagement.

Financial Implications

The cost of community engagement is to be met by the applicant.

Should Council proceed with any lease or disposal of the land, market valuations are recommended to be relied upon for the agreed value.

Other Information

A site plan is provided for further clarification:



Internal Consultation to CEO Comments

The following staff have been included in the consultation process in the preparation of this Report.

Name	Position	Consulted about
Ingrid Wilkshire	Manager City Strategy	Community Land Process
Rosa Gagetti	Property & Projects Facilitator	Community Land revocation process Community Land Management Plan
Nathan Grainger	Manager City Development	Planning considerations
Deana Taglierini	Governance Advisor	Motion to variation wording

Attachments

1.↓	Proposed Carpark Plan - 28 March 2022.....	345
2.↓	Council Report 12 April 2022.....	346
3.↓	Draft Community Engagement Strategy	390
4.↓	Amended Draft Community Land Management Plan: Holden Hill	398

Report Authorisers

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Nathan Grainger Manager City Development	8397 7200
Ingrid Wilkshire Manager City Strategy	8397 7292
John Moyle Chief Executive Officer	8397 7201