

## **Item 35 Toilet Block at Norman Horne Park, Leadville**

<b>Management Area:</b>	Development Services
<b>Division:</b>	Projects
<b>Author:</b>	Director Environment and Development Services – Leeanne Ryan
<b>CSP Key Focus Area:</b>	Local Economy
<b>Priority / Strategy:</b>	LE 4.1 Work with local business and industry to foster local, economic development, innovation and expansion.

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### **Reason for Report**

To provide information to Council on a request received from the Leadville Community Association Incorporated relating to exclusive use of the toilet block facility being constructed within Norman Horne Park located at Leadville.

### **Background**

Under the Stronger Country Communities Funding Round 2, funding of \$486,826 was allocated to Council for works to be undertaken to the Leadville Hall including demolition and reconstruction of the Council owned toilet block within Norman Horne Park. The funding deed between Council and NSW Premier and Cabinet details the funding is to be spent as follows:

- Installation of insulation and re-sheeting the outside of the hall including the roof and walls
- Installation of evaporative cooling and gas heating within the hall
- Construction of a Storage Room at the rear of the stage and verandah outside at the southern end of the hall
- Construction of a new toilet block
- Upgrades to kitchen
- Upgrades to disabled access
- Fire standard upgrades
- Security improvements
- Works to windows and doors

Whilst the funding has been provided to Council, the works have been scoped, quoted and trades engaged by Leadville Community Association Incorporated (LCAI). Council has spent considerable time assisting LCAI with hundreds of queries on matters relating to the project thus far. Building work is expected to commence shortly on both the hall and the toilet block.

For many years, the old toilet block (now demolished to make way for the new one) located within Norman Horne Park was utilised by the general public and travellers on a 24hour/7 day week basis. Further to this, the old toilet block has also been utilised by Leadville Hall as the toilets associated with the hall when functions and events are held within the hall. The dual purpose role of the toilets has worked for many years, with limited issues and limited vandalism.

### **Issues**

LCAI Proposal for exclusive use of toilets

Council has recently received a request (6/9/2019) from LCAI for exclusive use of the male and female toilets. Under this proposal the LCAI offer the disabled toilet to be available for the general public and travellers, with the male and female toilets locked until needed for hall functions.

LCAI allege this proposal was advised and emailed to Council many months earlier; however, no approaches on exclusive use have been raised or discussed with staff. Up until 6 September 2019, Council had not been approached, nor had it been agreed to the exclusive use of male and female components of the toilet block. LCAI have not made their intentions clear that this was being proposed from the onset of the project.

It has been stated by LCAI Public Officer – Mr Rob Lennon that early approaches were made to Council staff on this matter, *and in their view WSC should have been across this matter*. Mr Lennon claims the following extracts from earlier emails sent to Council demonstrate LCAI's intentions and requests for exclusive use of the toilets.

*Excerpt from an e-mail I sent to Leeanne on 28/5/2019*

*Pending questions for WSC management/Leeanne:*

- *GST - it is imperative the LCAI can be sure, the funding amount applied for does not include GST.*
- *GST (further) - assuming the funding application is successful, ask/offer that the WSC pay our works accounts directly so they can claim the GST refund...and LCAI won't need to become GST registered.*
- *Air Conditioning - EAC exemption?*
- *Discuss considerations for the 'Management Agreement' for the park block (this list not complete):*
  - *Lawn mowing duties for park block*
  - *Lighting and power*
  - *Matters relating to toilet block:*
    - *Septic tank (which is in good workable condition) but is used for toilets*
    - *Town bore water is used for flushing and basins*
    - *Cleaning of toilet - currently being done by a person from Dunedoo who does a great job.*
    - *Collecting rain water for the hall rain water tanks*
    - *R&M responsibilities:*
      - *Septic tank and trench*
      - *Building*
      - *Power (electricity)*
  - *That the toilet block (being on council-managed land) can be 'linked' to the hall*

*Excerpt from an e-mail I sent to many on 28/3/2017*

*Dear Leeanne, Louise, Ann-louise, Wendy, Roger and Peter (& all WSC councillors),*

*It seemed to me, a fantastic Dunedoo WSC meeting last night, and watching your process regarding issues raised made me feel that the WSC are heading in a solid direction. I noted also your acknowledgement to detail, and the caring approach - great stuff to be part of.*

*Thank you for the recent work done on issues Leeanne, and specifically the disability access ramp and toilet. Just to formalise our discussion, the LCAI agree the disability access ramp is to be removed from encroaching on the public land, and also agree the toilet block (if it is to go ahead as planned) is to have a new septic tank installed on the public land. So in summary of the toilet block, although there will still be links between the LCAI and community blocks of land including sharing power and water (and most importantly, the link between toilet and hall), the septic part in its' entirety will be on the public land. Stuart and I now have delegated authority by the LCAI to make these works decisions.*

*The opportunity to address the meeting was greatly appreciated, and I hope in that time I was able to provide facts and instil confidence to those who were not familiar with our project. Attached is the final 'Estimation of costs' for the proposed works for the funding meeting today. Please note that some of the figures have come down a little from the 'Estimation of costs' sheet I provided to you Roger on Monday - as I explained at the meeting last night, it has only been the 'contingency' component that was reduced, and the builders are happy the resulting figures are well-within the scope of works proposed.*

*Also, we have already removed some of the works which we hoped to include and put them in a column labeled 'Future quotes values' - we accept we are not able to ask for funding in excess of \$500,000.00, so we have already made that reduction. Whilst reluctant to see these works put on hold, we made that decision as a result of an acknowledgement that it is imperative all 4 major works projects are funded, as they are all so closely interrelated, and the works are more cost-efficient if they are carried out simultaneously (we are doing our best to maximise the grant money, should it be made available).*

*To expand on this, the four major works are....*

- The re-sheeting/insulating of the outside of the hall (roof and walls)*
- Air conditioning (evaporative cooling and gas heating)*
- The construction of a 'Green Room' and verandah on the southern end of the hall*
- The construction of a new toilet block.*

*In the event the full amount of funding cannot be provided, we will choose to asses the toilet options, as it is slightly less integrated. It will however mean that the kitchen verandah will not be able to be built, as the SW corner will end up about 1 meter from the existing toilet block...it needs to be 3 metres (I believe). Ironically, the toilet block is the only part of our building project on shire land, so if we are able to receive all the funding we are applying for, the shire will be greatly advantaged in being responsible for providing a modern 24hr fully accessed disable toilet..and in a much needed location.*

Discussions held, and emails from LCAI have provided no indications to Council that exclusive use was being sought for the male and female areas within the toilet facility.

Land status of Norman Horne Park

The toilet facility is located on Norman Horne Park, and belongs to Council. This land is public land and classified as Community Land through prior resolutions of Council. Under Council's Plan of Management for Community Land, adopted by Council on 20 April 2017 (Resolution 251/1617), the land is categorised for Park purposes.

Council's Plan of Management for Community Land (PoM) can only offer exclusive use for community land through entering a lease; however the plan is quite restrictive in the provision of Community Land for lease purposes. In relation to Norman Horne Park, the following extract from the plan applies;

#### **4.4 Leases, Licences and Other Estates**

*Council may consider granting leases and licences on Community Land categorised as Park as per Appendix 2 subject to the following conditions:*

- *The use is restricted to a public purpose, and*
- *Development be for a purpose which promotes or is ancillary/complimentary to its major function as a recreation area and the enjoyment of the land as a public park and for public recreation*

Legal advice was sought during March 2018 on whether Council was legitimately able to provide consent (under the DA process) for works to a building that relied on using toilets that belonged to someone else. Meaning; was Council legally allowed to consent to work being undertaken to the Leadville Hall that relied on using Council's toilets located on Norman Horne Park to meet the requirements of the National Construction Code in regards to the Premises Standards. Within the advice, the solicitor raised the fact that the toilet block was on Community Land, and exclusive use could not be allowed under Council's PoM. The advice is as follows;

*Such facilities are intended to be for use of members of the public using a Park, rather than adjoining land. However, it would be difficult to argue there is a breach of the PoM or the Local Government Act 1993 if access to the toilets is also provided from the adjoining Hall. The toilets cannot be for the exclusive use of persons attending the Hall and access for other members of the public should not be restricted.*

Further to this, Appendix 2 of the PoM does not list toilet facilities as a community facility that can be leased.

#### **Options**

Due to the above provisions within the PoM, Council is unable to enter into an exclusive use agreement with LCAI for the public toilets. As exclusive use is unavailable under the PoM - a lease cannot be entered into. The above mentioned legal advice advises Council against entering into such an arrangement.

Reports from locals suggest that use of the toilet block by locals is relatively low, and it is likely that having access to the disabled portion of the facility would meet demands of locals and travellers. It is possible that Council could consider an informal arrangement whereby the male and female portions of the toilet block are locked and the keys retained by LCAI. If an event or function is being held at Norman Horne Park the LCAI could open the toilets on Council's behalf for use by the public. If Council was seeking to enter into such an arrangement we would not be responsible for cleaning the locked toilets prior and post hall functions with this responsibility resting with LCAI.

#### **Financial Considerations:**

Works to the Leadville Hall and the adjoining toilet block on Norman Horne Park are funded through Stronger Country Communities Funding Round 2 to the value of \$486,826 in total.

Council is responsible for auspicating the funding and providing progress reports and acquittals to the State Government on the project.

## **RECOMMENDATION**

That Council:

1. Notes the report in relation to the use of the toilet block at Norman Horne Park, Leadville.
2. Acknowledges that there is not a need to open the entire toilet block at all times, but does arrange for the Disabled Section of the toilets to be open at all times.
3. Arranges for all toileting facilities to be opened for certain events at the Park.
4. Permits the Leadville Community Association Incorporated to use the toilets in conjunction with activities at the Leadville Hall and provides keys to the Association for this purpose and carries out the cleaning of the toilets prior to and post such events.
5. Subject to the above, authorises staff to enter into arrangements with the Leadville Community Association Incorporated for the cleaning of the toilets.