

DEEDS OF INDEMNITY

Objective Reference:**Reports and Attachments****Attachments:****Deed of Indemnity RIC
Deed of Indemnity RIC Toondah****Authorising Officer:****Bill Lyon
Chief Executive Officer****Responsible Officer:****Peter Kelley
Chief Executive Officer, Redland Investment
Corporation****Report Author:****Anca Butcher
Redland Investment Corporation**

PURPOSE

The purpose of this report is for Council to resolve to provide a delegation to the Chief Executive Officer to enter into Deeds of Indemnity with Redland Investment Corporation and RIC Toondah.

BACKGROUND

1. On 28 November 2014, the Council resolved to incorporate Redland Investment Corporation Pty Ltd ACN 603 164 503 ("RIC"). Under the Auditor-Generals Act 2009 (Qld), RIC is classified as a public sector entity. RIC was incorporated on 2 December 2014.
2. Council is the sole shareholder of RIC.
3. RIC's charter includes gaining best value from surplus Council land and spurring investment to benefit the Redlands community. While RIC works commercially as a property development company, any developments it facilitates are intended to take into account the broader community needs, including social and environmental impacts.
4. The "Statement of Corporate Intent 2015-2016" which outlines RIC's objectives and strategy indicates that:

"Economic development opportunities and land transactions RIC will undertake include:

 - Investigating deploying capital responsibly to stimulate the local Redlands economy and create jobs

- Consider making strategic land purchases to grow the local Redlands economy and deliver on Council's objectives
 - Providing professional commercial services and negotiations for progressing Redlands' two Priority Development Areas at Toondah Harbour and Weinam Creek
 - Managing some surplus Council land to minimise operational costs to Council and uplift the value of the land
 - Developing land with or without partners
 - Buying, selling, managing and leasing land and applying for planning, environment and development approvals.
5. RIC Toondah is also a registered company under the Corporations Act. It was registered on 26 November 2015. RIC Toondah was created to deal with Council Land at the Toondah Harbour Priority Development Area, the Weinem Creek Priority Development Area and other land required for development in the Toondah Harbour and Weinem Creek Priority Development Areas. RIC is the sole shareholder of RIC Toondah.

ISSUES

The indemnity agreements attached to this report between RIC and RIC Toondah ("the companies") and Council is for Council to indemnify the companies with respect to all environmental liability incurred by the companies with respect to land that was transferred to the companies by Council **and** that was contaminated **at the transfer date**.

Reason for Indemnity

It is reasonable for Council to provide an indemnity to the companies for the following reasons:

- i. If Council had not transferred the land to the companies, Council would hold the liability for pre-existing contamination on the land (if the polluter could not be ascertained);
- ii. The land is transferred to the companies for the ultimate benefit of Council;
- iii. If Council does not provide the indemnities, the companies would be required to carry out extensive due diligence for contamination prior to accepting the transfer of the lands from Council. This is an expensive exercise.

The indemnity allows the Council to request that land be transferred back to the Council where the reasonable estimate of the cost to the Council of complying with obligations under the Deed is greater than the value of the land or the land is listed on the contaminated land register and there is no reasonable prospect of the land being removed from the register.

The indemnity does not apply to any contamination occurring on the land **after the transfer date**.

STRATEGIC IMPLICATIONS

Legislative Requirements

The *Local Government Act 2009* are relevant to this report. Council is acting in accordance with these Acts.

On 6 January 2017, the Under Treasurer gave a general approval under the *Statutory Bodies Financial Arrangements Act 1982* for Council to provide an indemnity without first needing to seek specific approval from the Under Treasurer.

Financial

The cost to Council is limited The indemnity allows the Council to request that land be transferred back to the Council where the reasonable estimate of the cost to the Council of complying with obligations under the Deed is greater than the value of the land or the land is listed on the contaminated land register and there is no reasonable prospect of the land being removed from the register.

People

There are no staffing implications of this report.

Environmental

Council is not accepting any environmental liabilities that it does not already hold.

Social

There are no implications for social considerations from this report.

Alignment with Council's Policy and Plans

The recommendation primarily supports Council's strategic priorities and is in accordance with Council's Corporate Plan 2015-2020 and Council's previous Council resolutions.

CONSULTATION

Consultation has occurred between senior staff of Council and the RIC board.

OPTIONS

1. That Council make the resolution as recommended by the officer;
2. That Council make amendments to the resolution; or
3. That Council request further information from the officer.

OFFICER'S RECOMMENDATION

That Council resolves to delegate to the Chief Executive Officer pursuant to section 257(1)(b) of the *Local Government Act 2009* to make, amend or discharge the Deeds of Indemnity at Annexure 1 of the report.