

Please address all communications to:
The General Manager
240 Blende Street
PO Box 448
Broken Hill NSW 2880
Phone 08 8080 3300
Fax 08 8080 3424
council@brokenhill.nsw.gov.au
www.brokenhill.nsw.gov.au

ABN 84 873 116 132

March 05, 2018

EXTRAORDINARY MEETING

TO BE HELD

THURSDAY, MARCH 08, 2018

Dear Sir/Madam,

Your attendance is requested at the Extraordinary Meeting of the Council of the City of Broken Hill to be held in the Council Chamber, Sulphide Street, Broken Hill on **Thursday, March 08, 2018** commencing at **6:00pm** to consider the following business:

- 1) Apologies
- 2) Disclosure of Interest
- 3) Reports
 - Development Application 156/2017. Proposed Statue of Roy Inwood VC on the footpath in front of 403 Argent Street, Broken Hill.



JAMES RONCON
GENERAL MANAGER

REPORTS

1. BROKEN HILL CITY COUNCIL REPORT NO. 34/18 - DATED MARCH 05, 2018 - DEVELOPMENT APPLICATION 156/2017. PROPOSED STATUE OF ROY INWOOD VC ON THE FOOTPATH IN FRONT OF 403 ARGENT STREET, BROKEN HILL (DA2017/156)..... 3

EXTRAORDINARY MEETING OF THE COUNCIL

March 5, 2018

ITEM 1BROKEN HILL CITY COUNCIL REPORT NO. 34/18

SUBJECT: DEVELOPMENT APPLICATION 156/2017. PROPOSED STATUE OF ROY INWOOD VC ON THE FOOTPATH IN FRONT OF 403 ARGENT STREET, BROKEN HILL DA2017/156

Recommendation

1. That Broken Hill City Council Report No. 34/18 dated March 5, 2018, be received.
2. That Development Application 156/2017 be refused for being inconsistent with the following sections of the *Environmental Planning and Assessment Act, 1979*:
 - a) Section 79C (1) (c) the suitability of the site - the proposed development is out of character with the street scape and location, and the proposal does not support the objectives of Council's strategic plan i.e. Living Museum Perfect Light Plan, and;
 - b) Section 79C (1) (e) the public interest – The proposed development is not to the benefit of the public in the proposed location. The proposal will be better suited in an existing war memorial remembrance precinct than the proposed location.

Executive Summary:

A Development Application has been lodged by the Broken Hill Sub branch of the Returned & Services League of Australia (RSL) for the erection of a bronze statue on the footpath at the front of the Sub branch office at 403 Argent Street, Broken Hill (the premises is known generally as 399 Argent Street, however Council's property system recognises the address as 403).

Report:

The Development Application has been lodged by the RSL, seeking approval to erect a life size statue of Roy Inwood VC (Victoria Cross) on the footpath at the front of 403 Argent Street. The proposal is also to have the footpath area paved with the names of local veterans on them.

The RSL, in information submitted to Council, have advised that the statue would be made of bronze with reinforcement in it to withstand the weather and vandals.

The RSL wish to have the statue in place by November 11, 2018 (Remembrance Day, 100 years after the end of WW1).

The RSL believe that the statue would be a "great tourist attraction" and Broken Hill, and would be the only life size statue of an Australian Victoria Cross Veteran in Australia.

The Department of Veteran Affairs notes that "a war memorial is a commemorative object intended to remind us of the people who served in and died as a result of war. War

memorials may take many forms, but common to all of them is the intention that they remind us of those we have lost to war”.

The Department further notes on their website “Each Anzac Day and Remembrance Day local communities gather around town memorials to commemorate those who left their community to join other service personnel in the defence of freedom”.



Subject site – 403 Argent Street



Photo mock-up of statue at front of premises (supplied by applicant)

Assessment

The following provides an assessment of the material presented in the application against relevant State and local planning legislation and plans.

Section 79C: Potential Matters for Considerations79C(1)(a)(i) the provisions of any Environment Planning Instrument (EPI)*Broken Hill Local Environmental Plan 2013 (LEP):*

The particular aims of the LEP are as follows:

- (a) to encourage sustainable economic growth and development in Broken Hill,
- (b) to encourage and provide opportunities for local employment growth, and the retention of the population, in Broken Hill,
- (c) to encourage the retention of mining and acknowledge that industry's heritage and regional significance,
- (d) to identify, protect, conserve and enhance Broken Hill's natural assets,
- (e) identify and protect Broken Hill's built and nationally significant cultural heritage assets for future generations,
- (f) to provide for a range of housing types and living opportunities,
- (g) to provide for future tourist and visitor accommodation in a sustainable manner that is compatible with, and will not compromise, the natural resource and heritage values of the surrounding area.

The zoning of the land under the provisions of Broken Hill LEP is zone B2 (Local Centre).

The Objectives of zone are:

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.

Comment: The proposal, being a statue, does not specifically relate to any of these objectives.

Schedule 5 (Part 2) of LEP:

The actual lot of land on which the RSL Sub branch is located is listed as a Heritage Item in Schedule 5 of the LEP. The proposed statue is not to be located within the boundaries of the land, as it will be on the footpath.

The location is within the Argent Street Heritage Conservation Area. This covers an area from Crystal Street to Beryl Street, between Iodide Street and Garnet Street.

s79C(1)(a)(ii) the provisions of any draft EPI

Not applicable.

s79C(1)(a)(iii) the provisions of any Development Control Plan (DCP)*Broken Hill Development Control Plan 2016:**Advertising and Notification*

The proposal was publicly advertised to allow for submissions to be made. The proposal was advertised in the Barrier Daily Truth on three occasions. The comment period was from 4 December 2017 to 3 January 2018.

As a result, no public submissions were received.

Heritage- This section of the DCP provides design guidance for new buildings or alterations/additions in heritage conservation areas.

There are no specific provisions in this section of the DCP which relate to the proposal.

Preservation of trees or vegetation –

Not applicable in regards to the provisions of the DCP.

s79C(1)(a)(iia) any planning agreement that has been entered into or any draft planning agreement that the developer has offered to enter into

Not applicable.

s79C(1)(a)(iv) any matters prescribed by the regulations

Not applicable.

s79C(1)(b) the likely impacts of the development

Context & Setting - What is the relationship to the regional and local context in terms of:

- The character and amenity of the locality and streetscape?
- The scale (bulk, height, mass) form, character, density and design of development in the locality?

The proposed location is within the Central Business district of Broken Hill. The area features a mix of primarily business premises, including shops, cafes, hotel buildings. All buildings in close proximity of the location are built to the footpath and many feature over-footpath verandahs.

On the footpath area directly at the front of the RSL premises, is a bench seat, street garbage bin, heritage trail tourism sign, small garden bed and flagpole. It is quite a cluttered footpath area.

Some Councils throughout Australia have specific Planning Policies/Plans which relate to Memorials and monuments. For example, City of Charles Sturt in Adelaide – their “Memorials Policy” provides guidance on management and placement of existing and new memorials. Of particular interest, in regards to War memorials it states the following guidelines:

- Wherever possible any war memorial and the remembrance of any future conflict should be made at an existing war memorial site (in consultation with the relevant Ex-Services Organisation(s)).
- Where a request for a new war memorial is made on a site not currently recorded or used as a war memorial site, the request should be referred to Councils Heritage Project Officer for comment prior to Councils consideration.

Broken Hill City Council management have discussed concerns over the proposed location of the Roy Inwood VC statue with the local RSL Sub branch, however their representative was adamant that their preferred location was at the footpath at 403 Argent Street.

Social impact on the locality - What would be the social benefits and costs of the development in terms of:

- Social cohesion?
- Community facilities and links?

Economic impact on the locality - What would be the economic benefits and costs of development in terms of:

- Employment generation?
- Existing and future businesses?

Not applicable.

s79C(1)(c) the suitability of the site for the development

- Are utilities and services available to the site and adequate for the development?
- Is the site subject to natural hazards including flooding, tidal inundation, subsidence, slip, mass movement, and bushfires?
- Is the proposal compatible with conserving the heritage significance of the site?

A Dial-before-you-dig search indicated the following utilities all run in front of the RSL building:

1. Telstra fibre optic and major network present on the footpath (50mm conduit with 2 x 10 pair cables) located near the building frontage.
2. The APA group advised that above ground gas assets are in the vicinity of the RSL.
3. NBN advised that ducted network is installed – approx. 1 meter from building frontage.
4. RMS advised that infrastructure is present for the traffic signals (traffic lights).

This indicates that not only would extreme care be needed when installing a statue on the footpath, it also limits where the statue can go. It would not be suitable to move the statue close up to the building in particular to the infrastructure of Telstra and NBN and associated easements.

Council records indicate there are no natural hazards such as flooding, subsidence, or bushfires.

As part of the assessment of the Development Application, internal referrals were undertaken, and responses received from Council's Gallery and Museum Manager, Heritage Adviser and Strategic City Development Officer.

A summary of responses are provided as follows:

Gallery and Museum Manager:

The proposed bronze sculpture is of value to the heritage of this town and a very worthwhile subject matter to portray. I am in agreement that the sculpture should be made but would suggest that the location is reconsidered for the following reasons:

- The location does not do the sculpture justice.
- There are a number of cluttered items on that part of the footpath including, a bush, bench, bin and 2 different didactic panels which do not explain the sculpture. None of these items do the sculpture justice or award it due respect.
- The didactic panel that will be directly next to the sculpture is about Argent St in 1887 and gives a confusing message to the public.
- If the sculpture is too close to the road cars may come close to it.
- When cars park or stop at the intersection in front of the RSL building the sculpture will be visually blocked.
- Is there enough safe space around the sculpture for the public to safely photograph it and admire it without getting too close to the road or blocking access?
- What will happen if the RSL moves location?

Heritage Adviser:

- The statue should be considered in the context of the potential for street art, footpath upgrades etc. along Argent Street. This scope is a key element of the Living Museum and Perfect Light project. It is difficult to ascertain how this statue fits with that concept.
- Locating an isolated statue in the street in a location that has no specific meaning except that it is outside the RSL building does not seem like a sound approach to public art.
- The location is already busy and cluttered and without a major rework the statue will present as an obstruction, no matter how much artistic merit it may have.
- Usually such statues are the focus of a location where memorial events occur, this cannot be the case as proposed as it is a footpath without and setting or presence.
- There are already clear memorial locations within the city where events occur where an additional element could be added with dignity and within an appropriate setting. It is not clear if the object is just a sculpture or is intended as some form of memorial, it probably fits into both categories.
- It is understandable that there may be a desire to locate the statue near the RSL, but the link is not necessary even if desired.
- The footpath treatment (paving) is not supported. This would need to form part of a city wide strategy for dealing with footpaths, memorials, public art etc.

Strategic City Development Officer:

"In 2015, Council adopted the Broken Hill Living Museum + Perfect Light Project".

"The intention of the project is to provide an overarching big picture of the Broken Hill CBD identifying strategic actions and initiatives to inform change with the outcomes of:

- protecting and enhancing the heritage streetscape of Argent Street;
- providing short and long term initiatives for the CBD to increase local and tourist visitation both day to day and through special events and festivals;
- activating the main street and increase economic viability;
- improving the public face of the CBD at entry points, especially from the train station;

- improving the public open space, most notably the Town Square;
- increasing safety and vibrancy through activation and lighting;
- providing areas of long term shaded parking, and
- reinforcing the established art scene in Broken Hill through public art projects, lighting and installations”.

“An activation strategy deriving from this report is the future development of a ‘Welcome Walk’ avenue planting in Chloride Street from the Train Station to the Town Square. The proposal for the ‘Welcome Walk’ is a shaded avenue with artwork and sculpture, forming a fantastic arrival experience into the town centre.

This would involve the removal of the central parking from Chloride Street to accommodate the ‘Welcome Walk’, Womens’ Memorial and Commemoration of Community Heroes in the suggested form of sculpture or artworks.

Whilst this activation strategy has not yet been further developed in terms of costings or detailed designs, it should be considered prior to the determination of this Development Application”.

Overall, from a tourism, economic development and recognition point of view, the Strategic City Development Officer is supportive of the sculpture, however, not in its proposed location.

s79C(1)(d) any submissions made in accordance with this Act or the Regulations?

No public submissions were received.

s79C(1)(e) the public interest

When determining a Development Application, Council must “weigh up” all matters relating to the proposal.

The public interest is a broad consideration that can relate to many issues, and it is Council’s responsibility to consider which issues/matters should be given “more weight” than others.

Refusal of the proposal is considered to be in the broader public interest.

Support is given to the proposed erection of a statue of Roy Inwood VC, however not in the location proposed. It is considered to be of more benefit to the public to be located elsewhere, perhaps the existing war memorial remembrance area at the front of the Court House or even the Town Square. These alternative locations would do the statue the justice it deserves.

Recommendation: Section 80 of the *Environmental Planning and Assessment Act 1979* sets out that Council is to determine a development application by:

- (a) granting consent to the application, either unconditionally or subject to conditions, or
- (b) refusing consent to the application.

It is recommended that Development Application 156/2017 be refused, due to the proposed location being inappropriate and not in the public interest. The Broken Hill RSL Sub branch should be encouraged to consider more appropriate alternative locations.

Based on the planning reasons as espoused above and in particular because of the professional viewpoints of Councils Heritage Advisor and Gallery and Museums Manager,

Council staff believe that because of the proposed location of the statue, development application 156/2017 should be refused.

However should Council wish to proceed with an approval of Development Application 156/2017, it is suggested that the approval be subject to conditions.

The following conditions are appropriate to be imposed on the consent:

1) Dial Before You Dig

Underground assets may exist in the area that is subject to the approved development. In the interests of health and safety and in order to protect damage to third party assets contact Dial before you dig at www.1100.com.au or telephone on 1100 prior to works commencing. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before you dig service in advance of any construction. Care must be taken to ensure any identified assets are protected accordingly.

If the development is likely to disturb or impact upon telecommunications infrastructure, written confirmation from the service provider that they have agreed to the proposed works must be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate or any works commencing, whichever occurs first.

2) Construction certificate

In accordance with the provisions of Section 81A of the *Environmental Planning and Assessment Act 1979* construction works approved by this consent must not commence until:

- a) A Construction Certificate has been issued by Council or an Accredited Certifier. Either Council or an Accredited Certifier can act as the "Principal Certifying Authority."
- b) A Principal Certifying Authority has been appointed and Council has been notified in writing of the appointment.
- c) At least two days' notice, in writing has been given to Council of the intention to commence work.

The documentation required under this condition must show that the proposal complies with all Development Consent conditions and is not inconsistent with the approved plans, the Building Code of Australia and the relevant Australian Standards. A detailed location plan must be provided, and all relevant structural details.

3) Protection of Public Places

The adjoining and adjacent public area is not to be obstructed by any materials, vehicles, refuse skips and the like, under any circumstances unless approved in writing by Council.

If the work is likely to cause pedestrian traffic in a public place to be obstructed or rendered inconvenient, or involves the closure of a public place, a barrier, fence or hoarding shall be erected prior to the commencement of any work.

Where a hoarding is required, an application for hoarding is also to be submitted to and approved by Council prior to commencement of any work. Hoardings shall be erected to comply with the requirements of WorkCover, the Principal Certifying Authority and with relevant Australian Standards.

4) Maintenance and Graffiti removal

The statue shall be kept in a clean and well-maintained condition at all times by the developer. Any evidence of vandalism, such as graffiti, must be removed and/or repaired within a 48 hour period.

5) Heritage relics

During construction, the development is to proceed with caution. If any Aboriginal objects are found, works should stop and the NSW Office of Environment and Heritage contacted. In the event that an Aboriginal relic is uncovered, work must cease immediately and the NSW Office of Environment and Heritage must be contacted. All workers on the site are to be made aware of this condition.

6) Construction works

During construction, works are to be carried out so as not to cause damage to nearby public infrastructure, services and utilities, including kerb and gutter, water mains, sewer mains and roadways. All damage arising from works is to be made good and any necessary repairs and renovations carried out immediately to the satisfaction of Council and at no cost to Council.

7) Direction of statue

The statue shall be erected so that it is facing in generally a westerly direction, looking towards the War memorial precinct (at the front of the Court House in Argent Street).

Strategic Direction:

Key Direction:	Our Environment
Objective:	3.3 Proactive, Innovative and Responsible Planning supports the community, the environment and beautification of the City
Function:	Built Environment
DP Action:	Not applicable

Relevant Legislation:

Environmental Planning and Assessment Act 1979
Broken Hill Local Environmental Plan 2013

Financial Implications:

Nil

Attachments

There are no attachments for this report.

FRANCOIS VANDERBERG
MANAGER PLANNING, DEVELOPMENT & COMPLIANCE

JAMES RONCON
GENERAL MANAGER