

Planning and Development Services Reports


Committee Consideration – 13 November 2012
Council Resolution – 27 November 2012

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PD45.12	No. 101 Monash Avenue, Nedlands (Hollywood Hospital) – Proposed Acute Adult Voluntary Mental Health Unit
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Committee	13 November 2012
Council	27 November 2012

Applicant	Peter Driscoll - Landvision
Owner	Ramsay Hospital Holdings
Officer	Elle O'Connor – Planning Officer
Director	Peter Mickleson - Director Planning & Development
Director Signature	
File ref.	DA12/360 : MO1/101-09
Previous Item No's	
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Purpose

The application is referred to Council for determination as in 2009 Council resolved that no further development would be considered until a comprehensive revised Master Plan was presented and approved. To date, no revised Master Plan has been approved.

Recommendation to Committee

Council:

1. **approves an application for an Acute Adult Voluntary Mental Health Unit at No. 101 Monash Avenue, Nedlands (Hollywood Hospital) in accordance with the application and plans received 5 September 2012 subject to the following conditions:**
 - a. **the unit will accommodate a maximum of 30 patients;**
 - b. **twelve (12) additional car parking bays are to be located on site;**
 - c. **all stormwater from building, paved areas and driveways shall be contained on site by draining to soak wells of adequate capacity to contain runoff from a 10 year recurrent storm event; and soak wells shall be a minimum capacity of 1 m³ for every 80 m² of paved or roofed surface on the property.**

- d. the use of bare or painted metal building materials is permitted on the basis that, if during or following the erection of the development the Council forms the opinion that glare which is produced from the building / roof has or will have a significant detrimental effect upon the amenity of neighbouring properties, the Council may require the owner to treat the building / roof to reduce the reflectivity to a level acceptable to Council.
- e. any additional development, which is not in accordance with the original application or conditions of approval, as outlined above, will require further approval by Council.

Strategic Plan

KFA 3: Built Environment

- 3.2 Encourage the development of diverse residential and commercial areas to meet the future needs of the whole City.
- 3.3 Promote urban design that creates attractive and liveable neighbourhoods.

Site Details

Property Address: 101 Monash Ave, Nedlands
(refer Locality Plan – Attachment 1)
Zoning MRS: Urban
Zoning TPS2: Special Use

Proposal Detail

The proposed mental health unit is a single storey building which will replace an existing facility (Fredrick Bell Ward) which accommodates 30 beds and is now over 50 years old.

The new mental health unit will replace the existing building with more modern facilities and comprises of 30 beds, a large dining area and a courtyard.

Background

Over the past years development at Hollywood Private Hospital (HPH) has occurred on an 'as needed' basis and approved by Council in accordance with the HPH Master Plan adopted 2007 (refer to Attachment 2).

At the Ordinary Council Meeting of 24 November 2009, Council resolved the following:

COUNCIL RESOLUTION / COMMITTEE RECOMMENDATION

That Council does not:

- (a) consider any proposed development at the Hollywood Private Hospital site;**
- (b) initiate any Amendments to Town Planning Scheme 2**

until a revised Masterplan detailing the proposed buildings, car parking, access, land uses and associated heights for the entire site, including comprehensive development controls over the site, and a transport plan, is presented to and approved by Council.

A Master Plan prepared by Landvision was submitted to Council with a proposed scheme amendment. This amendment did not proceed and Council determined that a revised Master Plan was required with several matters needing to be satisfactorily addressed including the following:

- the Master Plan should in its presentation and detail i.e. refer to height from an agreed datum or mean average base level in area to determine maximum building height;
- be accompanied by a base plan which shows only the existing building footprints, parking etc. without added data;
- to show maximum building heights (in storey's) in each of the Precincts;
- show proposed development setbacks;
- a plan showing all existing areas of landscaping and its percentage of the site; and
- produce a simple Master Plan with no buildings shown, dividing the site into simplified precincts.

A new Master Plan for HPH has been prepared by Landvision and submitted to Council. However, it is anticipated that the processing and approval of the new Master Plan will be a lengthy procedure. Due to this the applicant requests that Council approve an urgently required extension to the existing mental health unit prior to adoption of the Master Plan.

Consultation

Required by legislation: Yes No

Required by City of Nedlands policy: Yes No

Legislation

- Residential Design Codes (RCodes).
- City of Nedlands Town Planning Scheme No.2 (TPS2) – Clause 6.4.2

Discussion

The proposed mental health unit complies with all requirements under the City's TPS2, including building height (clause 5.11) and setbacks (Table II).

As the application proposes to remove eight (8) existing car bays, the car parking design must be modified.

Car parking and Traffic

<p>Car parking</p>	<p>The parking requirements for a 'Hospital' under Schedule III in TPS2 are:</p> <p>12 OR 1 bay per every 4 beds – whichever is greater.</p> <p>The new facility proposes 30 beds; therefore the parking requirement is 12 bays.</p>
<p>Applicants Proposal</p>	<p>Propose to remove 8 bays and provide an additional 12 bays onsite (refer to Attachment 3).</p>
<p>Applicant justification summary</p> <p>Note: A full copy of the applicant justification received by the City has been given to the City's Councillors prior to the meeting.</p>	<p>The existing building which is proposed to be replaced by a new Acute Adult Voluntary Mental Health Unit currently has 30 beds. There are 8 existing parking bays to service this facility.</p> <p>The new Mental Health Unit will still have 30 beds and the attached plan (refer to attachment 3) shows where the loss of bays can be provided throughout the campus. The plan shows that there are 41 potential car bay locations.</p>
<p>Officer technical comment</p>	<p>The site offers ample space to relocate the lost 8 car bays and to provide an additional 4 bays in order to comply with the requirements of Schedule III.</p> <p>As the existing facility (Fredrick Bell Ward) to be replaced currently accommodates 30 patients, no additional traffic or congestion issues will be created in the locality as a result of the new mental health unit.</p>

Conclusion

It is recommended Council approve the proposed Acute Adult Voluntary Mental Health Unit for the following reasons:


1. The proposed building will replace an existing single storey building which will not be visible from surrounding roads or residential areas.
2. The existing building to be replaced holds 30 beds; therefore no additional beds are proposed on site.
3. The application complies with both the old and proposed Master plans.
4. The mental health unit will not affect traffic in the locality.
5. It is a small scale development that does not require the guidance of a comprehensive Master plan approval.

Attachments

1. Locality Plan
2. Old Master Plan
3. Parking Relocation Map
4. Site Plan
5. Floor Plan
6. Elevations

PD46.12	Future planning for North Hollywood: Land use, movement and the public realm
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Committee	13 November 2012
Council	27 November 2012

Applicant	City of Nedlands
Owner	Various
Officer	Strategic Planning Department
Director	Peter Mickleson - Director Planning & Development
Director Signature	
File ref.	TPN/127-04
Previous Item No's	PD33.12
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Purpose

Council is requested to approve each of the proposed individual Strategies (Land Use, Movement and Placemaking) that address future planning for North Hollywood for public consultation.

Recommendation to Committee

Council:

1. **approves the North Hollywood Land Use Strategy for public consultation;**
2. **approves the North Hollywood Movement Strategy for public consultation; and**
3. **approves the North Hollywood Placemaking Strategy for public consultation.**

Strategic Plan

- KFA 3: Built Environment
- 3.3 Promote urban design that creates attractive and liveable neighbourhoods.
 - 3.5 Develop and implement precinct plans for key areas in the City.

- KFA 6: Community Engagement
6.2 Encourage community participation in the City's decision making processes.

Background

Property Address: various
Lot Areas: ranging from 350 m² to 2229 m² (median approximately 1110 m²)

A land use strategy, a movement strategy and a placemaking strategy have been prepared for North Hollywood. This work resulted from the neighbourhood's inclusion in the Hampden and Broadway Precincts Study in 2010. The intent is to address the long-term future of North Hollywood, whilst proactively responding to the neighbourhood's current issues.

In May 2011, a survey was circulated amongst the community to provide residents the opportunity to consider development options for North Hollywood.

The survey results were inconclusive:

- Each of the four (4) options received 25 % support from those people completing the survey.
- Analysis of the survey results identified that there did not appear to be any middle ground amongst the responses.
- People were either considerably for or against each of the proposed draft development options.

Consequently, work commenced on each of the three (3) strategies. They were integrated into one (1) combined document and presented in its draft form for Council to endorse for public consultation. At its Ordinary Meeting held on 28 August 2012, Council resolved to refer the draft document back to administration for further work.

The decision to refer the document back to administration was not accompanied with a firm direction from Council. Additional work has been done by splitting the single document up into three (3) individual strategies. Some additional information has also been added into the movement and placemaking strategies. This report documents these changes and puts forward a land use strategy, a movement strategy and a placemaking strategy, so that a Council decision can be made in regards to each in order to determine which matters are to be progressed.

Key Relevant Previous Decisions:

28 August 2012 - PD33.12.

Council Resolution

Does not endorse the proposed draft North Hollywood Strategy for public consultation and it be referred back for further work.”

Proposal Detail

The proposal comprises of Council endorsing three (3) draft North Hollywood Strategies for public consultation, namely a land use strategy, a movement strategy and a placemaking strategy. The desired outcome is that each strategy sets the context for consistent decision making for the neighbourhood.

Each strategy is briefly explained below:

North Hollywood Land Use Strategy

This Strategy evaluates each of the four development scenarios – status quo, edge, incremental and comprehensive. The Strategy recommends edge development scenario as its preferred outcome for North Hollywood. Under this scenario, change is proposed along the edges of the neighbourhood (Aberdare Road and Verdun Street).

North Hollywood Movement Strategy

This Strategy considers a range of options relating to movement through the area. Covered in the options are a variety of modes that include walking, cycling, public transport and single vehicles. The desired outcome is to have a holistic approach that assists Council to make informed decisions on the future transit options in the neighbourhood.

North Hollywood Placemaking Strategy

This Strategy focuses on improvements to the public realm. The document identifies a place vision for North Hollywood and advocates for involving the community in placemaking. The strategy includes a number of key focus areas around the neighbourhood that will be implemented at different levels depending on the development scenario.

Making changes:

Each of the three (3) Strategies have been drafted in such a way that specific actions to achieve the recommended development scenario can be added or subtracted. Ultimately the recommended development scenario can be changed by Council.

Consultation

Required by legislation: Yes No

Required by City of Nedlands policy: Yes No

Consultation type:

The Strategies that are endorsed by Council for public consultation will be advertised for public comment for 28 days.

Advertising will include one (1) notice in the local press, letters being mailed to all landowners, residents and traders and information being published on the City's website.

Copies of endorsed Strategies will be made available at the City's Administration Office and on the City's website.

Legislation

- Nil.

Budget/financial implications

Budget:

Within current approved budget: Yes No

Developing, adoption and management of the strategy can occur within the current approved budget.

Requires further budget consideration: Yes No

Future budget considerations are only in relation to actions recommended in order to implement the Strategy over it life time.

Financial:

Only implementation of proposals within the Strategy will have financial implications for the City.

Risk Management

The risk of not adopting a strategy for the development of North Hollywood is that continual pressures for redevelopment will undermine the leafy large lot scale residential living character of the area.

Discussion

What has stayed the same?

1. North Hollywood is still in a state of flux. A clear direction and consistent decision making for the neighbourhood is still needed.
2. The development scenario remains the most important aspect of resolving North Hollywood's future. It sets the context for managing parking and traffic (movement strategy) and upgrading the public realm (placemaking strategy) in the short and long-term.
3. The North Hollywood Land Use Strategy still recommends a clear direction (edge development) and sets out what needs to happen to make this happen.
4. Edge development retains the majority of the neighbourhood's large lots.
5. Placemaking actions are intended to involve the community and telling North Hollywood's story.
6. Implementing the recommended development scenario implies an ongoing long-term direction for the neighbourhood.
7. It is also acknowledged that circumstances may change and that the recommendation may require revisiting.
8. Monitoring and review continues to be an important part of each strategy. It will ensure that its actions remain current, and can easily be adapted to accommodate changing circumstances.

What has changed?

1. The single document has been separated into three individual strategies.
2. Highview Park has been added as a key focus area in the placemaking strategy.
3. The importance of Verdun Street has been emphasised in the movement strategy.

Conclusion

Taken cumulatively the three North Hollywood strategies provide an overriding development vision for the neighbourhood and adequate detail for directing action in the short, medium and long term.

This approach and its recommendations provide the area with the opportunity to build an identity based on its distinctive character.


It is recommended that each of the draft strategies are approved for public consultation as the initial step toward final adoption.

Attachments

1. Draft North Hollywood Land Use Strategy
2. Draft North Hollywood Movement Strategy
3. Draft North Hollywood Placemaking Strategy

PD47.12	Proposed Amalgamation of Lots 52-59 (No. 1, 3, 5, 7, 9, 11, 13 & 15) Milyarm Rise, Swanbourne (WAPC/146801)
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Committee	13 November 2012
Council	27 November 2012

Applicant	Guidice Surveys
Owner	Western Australian Land Authority
Officer	Jason Moore – Strategic Planning Officer
Director	Peter Mickelson – Director Planning & Development
Director Signature	
File ref.	WAPC/146801
Previous Item No's	Nil
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Purpose

The purpose of this report is to provide comments to the Western Australian Planning Commission (WAPC) in regard to the proposed amalgamation and re-subdivision of lots 52-59 (No 1, 3, 5, 7, 9, 11, 13 and 15) Milyarm Rise, Swanbourne.

Recommendation to Committee

Council recommends approval of the proposed amalgamation and re-subdivision of lots 52-59 (No 1, 3, 5, 7, 9, 11, 13 and 15) Milyarm Rise, Swanbourne subject to:

1. **the Australian Planning Commission (WAPC) be requested to impose the following conditions on the subdivision approval:**
 - a. **the City of Nedlands Town Planning Scheme No.2 (TPS2) to be amended as follows:**
 - i. **changes to the Town Planning Scheme No.2 (TPS2) map to amend the density coding of lots from R60 to R25; and**
 - ii. **changes to clause 5.3.11 by deleting clause 5.3.11(a) to remove the building heights advantage provided in conjunction with the R60 density coding on these lots.**

- b. the concrete footpath in front of proposed lots 501 & 502 being completed to the City's specification.**
- 2. request Australian Planning Commission (WAPC) WAPC halt finalisation of Scheme Amendment No. 195.**
- 3. Council instructs Administration to amend Policy 6.5 and 6.6 (Swanbourne Design Guidelines A & Swanbourne Design Guidelines B) existing Design Guidelines A & B (Policy 6.6), by removing Precinct 6 from Design Guidelines B and inserting them into design guideline A with the provisions outlined in attachment 3 once the above amendment has been initiated.**

Strategic Plan

- KFA 3: Built Environment
- 3.3 Promote urban design that creates attractive and liveable neighbourhoods.
 - 3.4 Plan and develop the sustainable provision of community infrastructure and facilities with a focus on flexible and
 - 3.8 Facilitate appropriate development of existing residential housing to complement the surrounding residential amenity.

Background

Property Address: Lots 52-59 (No 1, 3, 5, 7, 9, 11, 13 & 15)
Milyarm Rise Swanbourne

Zoning MRS: Urban

Zoning TPS2: R60

Lot Area: 1600 m² (8 x 200 m²)

The proposal is for the amalgamation of eight (8), 200 m² lots into four (4) lots, each 400 m² (Refer to attachment 2).

The Swanbourne High School site bounded by Alfred Road, Narla Road and West Coast Highway, Swanbourne was granted conditional subdivision approval by the WAPC in June 2006. A requirement of the subdivision was that the land be appropriately zoned (from educational to residential) and design guidelines be prepared for the site

Scheme Amendment No. 144 was the amendment that changed the zonings of the lots within the site. The amendment was gazetted on 15 June 2004 and created an area with a mix of densities containing R20, R25, R30, R60 and R80 lots, creating nine (9) distinct precincts.

A set of design guidelines were created for the site which have been put in place to vary the RCodes Provisions.

These guidelines have been adopted as a Local Planning Policy and form part of the City's Policy Manual as policy 6.5 - Swanbourne Design Guidelines A (Precincts 1 To 5 & 9) and 6.6 - Swanbourne Design Guidelines B (Precincts 6, 7 & 8). Different design guidelines apply to the nine (9) different precincts. Design Guidelines A are relating to the medium/low density lots of the subdivision and Design Guidelines B are for the high density areas of the subdivision, which have also been provided with greater building heights than generally allowed. When precinct 6 changes in density coding it should change from Design Guidelines B to Design Guidelines A, to reflect the new built form that would be expected.

The site was subject to further scheme amendment, No 189. This resulted in a 12 m height restriction for the site, given the size of the lots.

In March 2011 Council supported the initiation of Scheme Amendment No. 195 on lots 49, 50 & 51 Nidjalla Loop, Swanbourne to allow additional height, from 10 m to 12 m. Lots 49, 50, 51 (No. 2, 4 & 6) Nidjalla Loop, Swanbourne abut along the western boundary of the land currently under consideration. The justification for scheme amendment No. 195 is that the increased height allowed on lots 52-59 Milyarm Rise, has resulted in a loss of amenity for the lots fronting Nidjalla Loop. Council adopted the scheme amendment in May 2012, but the scheme amendment process has not yet been finalised, refer to attachment 4.

Proposal Detail

The application proposes to amalgamate all eight (8) lots at lots 52-59 Milyarm Rise, Swanbourne and re-subdivide into four (4) lots. The lots areas currently 200 m², the resulting lots will be 400 m².

The current finished site levels steps from RL30.89 to the north to RL31.66 at the south of the existing lots. The stepping of the lots occurs as such that the four resulting lots will be flat and the height variations will occur between the proposed lots.

Consultation

Required by legislation: Yes No

Required by City of Nedlands policy: Yes No

Legislation

- *Planning and Development Act 2005* (as amended)
- Residential Design Codes 2010

Budget/financial implications

Budget:

Within current approved budget: Yes No

Requires further budget consideration: Yes No

Financial: The proposal has no financial implications for the City.

Risk Management

As the WAPC can proceed to determine this proposal without the City's comment if it has not been received by 8 November 2012, administration has requested an extension.

Discussion

The implication of the proposed amalgamation is as follows:

1. Lots 52-59 Milyarm Rise, Swanbourne

Given that lots are proposed to double in size from their current areas the existing R60 density coding is no longer appropriate. A density coding incorporates development provisions. At R60 more intensive development would be permitted on these lots than other properties in the area of similar size. That would result in developments that would not be consistent with the character that is being established in the area.

At an average lot size of 400 m² the appropriate density coding would be R25 to allow for larger setbacks and higher amounts of open space.

Currently the sites also enjoy a height advantage under Clause 5.3.11(a) of the City of Nedlands Town Planning Scheme No. 2 (TPS2). The additional building height was granted in order to enable developments that would provide adequate living area on the 200 m² lots. With the proposed amalgamation this building height is no longer desirable.

Accordingly it is recommended that the proposed amalgamation and re- subdivision is accompanied by a scheme amendment that addresses the density coding and removes the building height advantage.

Changes are also required to the design guidelines (policy 6.6). Currently Precinct 6 is within Design Guidelines B (medium to high density). The precinct will need to move to Design Guidelines A (low density residential) with the new provisions appropriate for the R25 density coding (refer to attachment 3).

The design guidelines are a policy within the City's policy manual. Council policies can be amended at an ordinary council meeting. The table below shows of current and new proposed development provisions is below:

Provision	Current (R60)	Proposed (R25)
Front Setback	2 m minimum, 4 m maximum.	4 m minimum 6 m maximum.
Minor horizontal incursions into the front and rear setback	Maximum permitted 0.5 m for 50 % of the elevation.	Maximum permitted 1 m for 50 % of the elevation.
Side setback	0 m minimum	1 m minimum.
Rear setback	3 m minimum at ground level, 6 m for upper levels.	4 m minimum for the ground and any upper floor
Privacy	Any balcony at the upper level that is located within 6 m minimum rear set back position shall be deemed to comply with the RCodes privacy conditions. A balcony at the upper level that is set further eastwards into the lot shall be required to comply with the RCodes.	Overlooking from any balcony or major opening at the upper level into the 4 m rear garden of adjoining properties is acceptable. Any overlooking of any other area of adjoining lots is not permitted (RCodes privacy provisions apply).
Open Space	Minimum 35 %	Minimum 45 %
Outdoor living	A courtyard shall be located at the mandatory rear northern position of the Lot to receive winter sunlight	A courtyard shall be located at the mandatory rear northern position of the Lot to receive winter sunlight.
Garage setback and design requirements	Minimum 2.5 m setback and located at least 0.5 m behind the dwelling's elevation. A verandah, porch or balcony is included as an element on the "elevation". Any element of the elevation that serves to reduce the visual impact of the garage on the street is deemed to be the dwelling's elevation.	Minimum 4.5 m setback and located at least 0.5 m behind the dwelling's elevation. A verandah, porch or balcony is included as an element on the "elevation". Any element of the elevation that serves to reduce the visual impact of the garage on the street is deemed to be the dwelling's elevation.
Maximum Height	12 m	10 m

2. Lots 49, 50, 51 Nidjalla Loop, Swanbourne

Scheme Amendment No. 195 was justified on the basis that the Precinct 6 was given greater height limits. This increase height was said to have a negative effect on the lots behind. With the proposed change the basis for Scheme Amendment No. 195 is removed and there is no need for the amendment to be progressed. Once a scheme amendment is initiated to amend the Swanbourne High School Design Guidelines, Scheme Amendment No. 195 should not be progressed as all of the justifications relating to the amendment will have been superseded.

Conclusion

The proposal to amalgamate all eight (8) lots and re-subdivide into four (4), 400 m² is acceptable, if the relevant changes to the Town Planning Scheme are made so that the resulting built form on these properties can be made appropriate for the lot size and the context of the area.

It is therefore recommended that the proposal be supported and approval recommended subject to requesting the WAPC impose conditions that require scheme changes and changes to the design guidelines.


Additionally it is appropriate that the recent Scheme Amendment No. 195, which was justified on the basis of building height limits, is reconsidered. Accordingly it is recommended that a condition of subdivision is imposed requesting that Scheme Amendment No. 195 not be progressed.

Attachments

1. Site Plan.
2. Subdivision Plan.
3. Attachment showing new provisions.
4. Scheme Amendment Process.

PD48.12	Final Endorsement of the DC Cruickshank Master Plan
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Committee	13 November 2012
Council	27 November 2012

Applicant	City of Nedlands
Owner	City of Nedlands
Officer	Gabriela Poezyn – Manager Strategic Planning Melanie Cathie – Project Consultant
Director	Peter Mickleson – Director Planning & Development
Director Signature	
File ref	TEN/330
Previous Item No's	Nil
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Purpose

This report seeks Council's endorsement of the DC Cruickshank Master Plan. The Master Plan project has involved extensive sports club and community consultation. Its purpose is to provide the blueprint for any future development on and of the reserve.

Recommendation to Committee

Council:

1. **endorses the DC Cruickshank Master Plan Report (refer to attachment 1), as the guiding document for future development at the reserve including capital budget allocations and grant applications subject to the following conditions:**
 - a. **the proposed BBQ facility at the playgrounds is removed;**
 - b. **the Master Plan provides for flexibility in relation to the building design and footprint of the proposed Collegians Amateur Football Club building to prevent the change to the width of the football oval;**
 - c. **the new proposed location of the tennis club's clay courts adjacent to the club building on the north side is acceptable on the condition that the club relocates the playground and ten (10) trees to the east of the new courts.**

2. **instructs Administration to propose a new or amend an existing Council policy to provide capital works grants outside of the Department of Sport and Recreation's CSRFF application process to sporting and other community groups.**

Strategic Plan

- KFA 1: Infrastructure
- 1.3 Provide and maintain quality passive and active recreational and leisure facilities and open space to meet community needs.
- KFA 3: Built Environment
- 3.4 Plan and develop the sustainable provision of community infrastructure and facilities with a focus on flexible and multiple uses.
- KFA 4: Community Wellbeing
- 4.1 Provide and facilitate access to services and facilities required by the broader community, clubs and community groups.

Background

Collegians Amateur Football Club approached the City approximately five (5) years ago with a plan to replace their existing club building with a new facility on DC Cruickshank Reserve. Recognising that there is a need to guide development at the reserve, the City subsequently commissioned the preparation of a Master Plan prior to any of the three (3) existing exclusive lease sports clubs undertaking substantial future works programs.

This Master Plan will also guide Council's future expenditure and grant applications in relation to the six (6) major sport and recreation reserves within the City.

The Master Plan process commenced in January 2012, with the appointment of Pandal and Neille Architects as the lead consultants. From this time there has been ongoing consultation with the three (3) exclusive lease sports clubs based at the reserve and there has also been three (3) rounds of community consultation held at various stages throughout the process.

The original brief for this Master Plan project was for the consultant team to investigate one shared use building on the reserve to cater for the existing three (3) exclusive lease sports clubs and future potential sport and community users. After the first round of club and community consultation there was overwhelming support for options other than the single shared use building to be investigated. Without investigation of other options, the clubs, community and City would not know if the single shared use building was the most economical option in the short and long term. As a result of this, the project scope was increased to

investigate two (2) other options which were deemed suitable for the reserve. All options are as follows:

- Option 1: renovate the existing bowls and tennis club buildings, a new separate football club building in the current building location.
- Option 2: a new building shared by the bowls and tennis clubs in a location between the existing two buildings, a new separate football club building in the current building location.
- Option 3: a new building shared by all three (3) sports clubs in a location between the existing bowls and tennis club buildings. The west end of the building would be occupied by the bowls and tennis clubs and a separate east wing for the football club.

Once the three (3) preferred options for the reserve were established, a cost plan for each was put together. The three (3) options and costings were then presented to the sports clubs, community and Council for comment. Overwhelming support was received for Option 1, maintaining each club in their own separate building. The costings for each option are in the table below.

	Option 1	Option 2	Option 3
Building component	\$1,563,000 (bowls) \$1,101,000 (tennis) \$1,991,000 (football)	\$3,686,000 (shared bowls and tennis) \$1,970,000 (football)	\$5,100,000 (shared bowls, tennis and football)
Playing surfaces and associated hard landscape	\$912,000 (bowls) \$242,000 (tennis) \$47,000 (oval)	\$1,140,000 (bowls) \$288,000 (tennis) \$47,000 (oval)	\$1,139,000 (bowls) \$282,000 (tennis) \$14,000 (oval)
Roads, paths, parking, retaining walls etc.	\$518,000	\$812,000	\$842,000
Soft landscape and minor works	\$500,000	\$500,000	\$500,000
Design contingency (~10%)	\$689,000	\$845,000	\$788,000
Consultants fees (~12.5%)	\$950,000	\$1,161,000	\$1,085,000
Authority fees, approvals etc. (~0.7%)	\$53,000	\$66,000	\$60,000
Loose furniture and equipment	\$75,000	\$100,000	\$100,000
Client contingency (~5%) and client management costs (~2%)	\$619,000	\$745,000	\$695,000
ESTIMATED TOTAL CURRENT PROJECT COST (exc. GST)	\$9,260,000	\$11,360,000	\$10,605,000

Although Option 1 was the club and community's preferred option, as well as the cheapest upfront cost option, the City felt it was in the best interest of all parties to investigate the operational costs for Option 1 and 2 into the future. Therefore a lifecycle cost analysis was completed for these two (2) options. This analysis identified for the bowls and tennis clubs the costs to operate and maintain their renovated buildings (as per Option 1) and the shared building (as per option 2). The results of this analysis are in the table below.

	25 years	50 years
Option 1	\$6.849 million	\$10.137 million
Option 2	\$8.976 million	\$13.054 million

The life cycle cost analysis includes initial capital costs, demolition costs, capital replacement/refurbishment costs, preventative maintenance costs and operating costs. An inflation rate has also been included. Excluded from these costings were the football club development costs, design and client contingency costs and client management costs.

Proposal Detail

The preferred blueprint for the reserve involves the renovation of the existing lawn bowls and tennis club buildings and a new football club building. The central spine of the reserve (the area in between the four (4) buildings, this includes the PROCC building) is to provide areas for community passive recreation as well as small gardens and additional parking. There are proposed additional native plantings on the reserve around the football oval (but excluding the football warm up area).

Consultation

Required by legislation: Yes No

Required by City of Nedlands policy: Yes No

Consultation type:

Engagement through mail-out to attend workshops/information sessions at three stages in the Master Plan process.

Community consultation period:

Round One: 15 February 2012 (morning and evening session)

Round Two: 28 June 2012 (morning and evening session)

Round Three: 4 September 2012 (one evening session)

Attendance numbers:

Round One morning: 42

Round One evening: 22

Round Two morning: 31

Round Two evening: 22

Round Three evening: 14

Comments received:

Please refer to the Master Plan report (refer to attachment 1) for the summary of feedback received from the sports clubs and community.

Legislation

- *Local Government Act 1995* in relation to the vesting of the land which enables the City to endorse a Master Plan to guide any new development at the reserve that will require relevant planning and building approvals.

Budget/financial implications

Budget:

Within current approved budget: Yes No

Requires further budget consideration: Yes No

Financial:

Adequate budgetary allocations were available for the preparation of the Master Plan in the 2011-12 budget and the work was undertaken by a consultant team led by Pandal and Neille Architects. The project was managed by Administration.

Any future developments in accordance with the Master Plan will require future budgetary allocations for capital works and grant funding allocations. The Master Plan will be used to assist grant funding applications in the future.

Risk Management

Most of the risk associated with the endorsement of this Master Plan relate to the raising of expectations, although much of this risk has been managed through the consultation process.

The alternative risks associated with not endorsing this Master Plan are the continuing deterioration of existing facilities which will impact negatively on the City from a financial and image perspective.

Discussion

As one of the City's six (6) major recreation reserves, it is important to provide a blueprint for DC Cruickshank Reserve, based on consultation and research, to guide any future developments and allow the City to make informed decisions regarding fund allocation and grant applications.

Option 1 is financially and from the community perspective the best option and is recommended to be endorsed subject to the following:

Physical features of the reserve

1. BBQ to be located near the playground in the south east corner of the reserve – many members of the community were against locating a public use BBQ on the reserve. This response from residents seemed mostly to be due to the vandalism issues that have been experienced in the past at Beaton Park, where there are both BBQ and public toilets facilities. Residents did not want similar problems to occur at DC Cruickshank. There is also a question of how much it would be used.

The BBQ is still included in the Master Plan at this stage but is recommended to be removed.

2. Football oval width – with the currently designed new building proposed by Collegians, the football oval would need to be 5 m narrower. It is recommended that minor changes to the new Collegians building design/footprint be considered in order to alleviate this issue.
3. Fenced Dog Park – this is subject to a current Council recommendation that Administration investigates three possible sites for such a park south of Stirling Highway, with DC Cruickshank being one of the sites considered. Should DC Cruickshank be chosen as the preferred site, it should be endorsed for approval as provision has been made in the Master Plan to allow for the dog park. However, this provision is flexible should DC Cruickshank not be the preferred site.
4. Clay tennis court relocation – subsequent to Option 1 being chosen as the preferred blueprint for the reserve, Dalkeith Tennis Club advised that they would prefer their proposed clay courts to be located adjacent to the club building on the north side to allow for better access and viewing from the club building. In order for these courts to be located in this position it requires the removal of a small playground and ten (10) trees. These ten (10) trees have all been assessed as not mature and easy to remove. Both the playground and trees can be replaced on the reserve by the club should Council wish them to do so which is considered to be desirable.

Administration actions

1. Funding for the redevelopments at the reserve – it is anticipated that any renovations carried out at the reserve will be done in a staged process. This will most certainly be the case for the bowls and tennis clubs with respect to their buildings, as they are both unable to afford to complete the full scope of renovations outlined in the Master Plan at one time.

Within current City policy, it is only possible for sports clubs to apply for funding from the City as a part of the Department of Sport and

Recreation's (DSR) Community Sporting and Recreation Facilities Fund (CSRFF). This becomes an issue for the sports clubs when they plan to undergo renovations that do not fit the CSRFF criteria for funding. Areas of a facility that do not relate directly to increasing/enabling participation in sport are not eligible for funding. For example, the bowls club as a priority needs to look at replacing the roof of their building. Roof replacement will then trigger the club's need to comply with current accessibility and energy efficiency building standards, all of which are unlikely to attract funding from DSR. As there are currently very limited funding sources for single club building renovation projects, it leaves the club having to fund the majority of the project themselves, which puts a significant financial strain on the club and its members.

It is recommended that Council require Administration to introduce a new or amend an existing policy to provide community and sports clubs in leased City buildings financial support for upgrades to these buildings outside of the CSRFF program criteria.

Conclusion

Given that Option 1 is financially the most suitable and the preference of the sports clubs and community, it has been chosen as the recommended option for the DC Cruickshank Reserve as per the Master Plan. It is recommended that Council endorses the Master Plan to be the guiding document for future works at the reserve as well as City capital budgets and grant applications.


In order to facilitate the implementation of recreational Master Plans in the City, it is considered essential that a new or amended policy is created that provides capital works grants outside of the Department of Sport and Recreation's CSRFF application process to sporting and other community groups. Without this option for financial support, the sports clubs on the reserve may not be in a position to move forward with much needed renovation works to their respective club buildings.

Attachments

1. DC Cruickshank Reserve Master Plan

PD49.12	Initiation of proposed Scheme Amendment No. 197 of Town Planning Scheme No. 2 to amend the zoning of Various Lots to "Special Use" to allow for a Woolworths development.
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Committee	13 November 2012
Council	27 November 2012

Applicant	MGA Planners on behalf of the owners
Owner	M L Wordsworth Pty Ltd
Officer	Strategic Planning Department
Director	Peter Mickleson - Director Planning & Development
Director Signature	
File ref.	TPN/A197
Previous Item No's	Nil
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Purpose

Council is requested to determine whether to initiate a rezoning proposal submitted by MGA Planners on behalf of the owners to amend the zoning of Lots 1 (80) Stirling Highway from "Hotel" to "Special Use", Lots 21, 22 & 23 (2,4,6) Florence Road and Lots 32 & 33 (9 & 11) Stanley Street from "Residential " to "Special Use".

Recommendation to Committee

Council does not initiate proposed Scheme Amendment No. 197 as it does not constitute orderly and proper planning for the following reasons:

- 1. the proposal does not address the planning vision for the lots;**
- 2. the proposal is not sensitive to its adjoining landuses;**
- 3. the proposal does not fully integrate with the sites' characteristics and history; and**
- 4. the proposal advocates for the dominance of one use within the proposed additional floor space which will create a development that is out of character for the area.**

Strategic Plan

- KFA 3: Built Environment
 - 3.2 Encourage the development of diverse residential and commercial areas to meet the future needs of the whole City.
 - 3.5 Develop and implement precinct plans for key areas in the City.
 - 3.8 Facilitate appropriate development of existing residential housing to complement the surrounding residential amenity.

Background

The proposal involves six (6) sites: (refer to attachment 1)

Lot Number	Street address	Current use	Existing zoning	Lot area (m ²)
Lot 1	80 Stirling Highway	Captain Stirling Hotel and bottle shop	Hotel/ Road Reserve	7619.96
Lot 21	2 Florence Road	Single House	Residential	1011.99
Lot 22	4 Florence Road	Single House	Residential	1011.91
Lot 23	6 Florence Road	Single House	Residential	1011.91
Lot 33	7 Stanley Street	Single House	Residential	1011.9
Lot 32	9 Stanley Street	Single House	Residential	1011.89
				12679.56

MRS Zoning of all land: Urban

The Captain Stirling Hotel was built in 1935 and the bottleshop in 1958 and both have operated for these purposes since then. The residential dwellings on the remaining lots were built in the early 1950's.

There are numerous existing strategic planning documents that affect the site, including the draft Stirling Highway Special Control Area Guidelines which were developed in 2009. Under these guidelines the above lots are earmarked to form part of a Village Hub.

The following time lines apply to the proposed scheme amendment:

Date	Action
26 June 2012	Application received by the City
13 September 2012	Meeting with applicant following assessment of proposal by planning
10 October 2012	Revised proposal received by applicant

The revised proposal varies in format from the initial proposal that was received in June 2012 but aims to progress the same concept as the original proposal.

The information was reorganised, some information was removed and some additional information in relation to certain aspects was provided. The effect of this has been that emphasis in the report on various aspects has changed.

Removed information:

- Elevations drawings showing the view from Stirling Highway, the North-east and North-west and explanatory notes have been removed.
- A1 drawings of the development proposal that Woolworths contemplated with the scheme amendment.

Information added:

- Requirement for a Detailed Area Plan and explanatory notes in this regard.
- Additional provisions to be included under Schedule V of the Scheme.
- Additional information on the methodology that has been applied in the Retail Sustainability Assessment.

Proposal Detail

The current proposal comprises of the proposed scheme amendment and an indicative development proposal for the site. For detail please refer to attachment 2.

The development proposal is one example of a possible development outcome if a scheme amendment were successful.

As the application is for the proposed scheme amendment and not a possible development proposal, the assessment focuses on evaluating the scheme amendment proposal rather than the accompanying development proposal.

Fundamental principles of the scheme amendment are:

1. Landuses:

Only the following landuses are permitted and there is no discretion to allow any other landuses:

- Shop
- Office - professional
- Office - Service
- Restaurant
- Hotel
- Shopping centre
- Civic Building
- Small Bar
- Multiple Dwelling

2. Retail Floor Area:

To provide for a retail floor area of 5513 m² Nett Lettable Area (NLA), or larger if justified by a Retail Sustainability Assessment for which the WPCA has not provided comment within 42 days. The retail floor area is to be used in accordance with Planning Landuse Category (PLUC) 5, which, according to the definition in the Activity Centre's Policy 4.2, includes any activity which involves the sale of goods from a shop located separately to and/or in a shopping centre except retail activities that due to their scale and nature would not be found in a shopping centre (i.e. car sales yard).

3. Local Area Plan:

The requirement for a Local Area Plan (LAP) for the whole site is stipulated as a prerequisite to determination of a planning approval. The provisions relating to the LAP addresses (refer to 38-45 of the scheme amendment document)

- a. The approval process and information required for a LAP and prescribes that:
 - i. Council may waive the need for a LAP;
 - ii. actions to occur within specific time frames (this includes the provision that if Council within 60 days of completion of advertising has not determined the LAP, the WAPC is required to determine the LAP within 60 day of receipt;
 - iii. right of review to the SAT which is available to the applicant only; and
 - iv. list of matters that the LAP must show (i.e. distribution of land use and floor space over site, movement network to and through the site, indicative landscaping, transition to neighbouring properties, areas for loading, storage, drainage and rubbish collection, indicative signage, and any other matter which the Council may require).
- b. Design Objectives for a LAP which focuses on the:
 - i. type of shopping facilities to be provided;
 - ii. movement network to facilitate pedestrian and cycle movement including a road design that manages traffic movement in areas of high pedestrian activity;
 - iii. buildings to address the public realm where possible, particularly Florence Street.

- iv. parking to be located such that most parking is concealed from view and does not constrain pedestrian connectivity through the centre.
- v. designs of buildings that encourage passive surveillance
- c. Design and Development Standards, that provides for :
 - i. wall heights of the proposed development and specifies that they are not to exceed the height of the existing Captain Stirling Hotel, but allowing entry statements and façade treatments extending beyond the maximum wall heights as established by the Captain Stirling Hotel;
 - ii. a covered, continuous pedestrian walkway along the facade of the new building with awnings as pedestrian scale
 - iii. parking and vehicle access as follows:
 - 1) for access to the site to be only from Stanley Street and Florence Street, with no access provisions from Stirling Highway;
 - 2) that on street car parking to be provided where possible;
 - 3) that on-site car parking being provided at the rate as prescribed in the Statement of Planning Policy SPP 4.2 but no on site car parking be provided between the front building setback line and the street reserve;
 - 4) to allow for approval of reciprocal carparking subject to a traffic impact assessment; and
 - 5) to facilitate modification to verge parking being considered by Council.
 - iv. expected standard of building elevations to be attractive from all vantage points, parapet walls being addressed, facades being articulated through design elements, external ducting etc being incorporated into the design of the building;
 - v. heritage values on the site as follows:
 - 1) location and design of new buildings shall not adversely impact heritage value of existing heritage buildings or dominate the original building;

- 2) provide for preservation, restoration and reconstruction of the original building and ensure that any external alterations to heritage buildings does not impact negatively on its heritage values and continue to enhance the streetscape;
 - 3) existing views from heritage buildings to be protected; and
 - 4) the new buildings shall not 'mock' the heritage buildings in design characteristics.
- vi. landscaping to be provided along all setback areas to streets, include lighting, provide that existing trees are maintained, replaced or relocated as per the arboriculturists recommendation and planting to provide shade in summer and access to sunlight for the street in winter;
 - vii. noise prevention through a requirement that any development approval must be accompanied by an acoustics engineers report; and
 - viii. bin and Service provisions requiring facilities to be provided to the satisfaction of Council and screened from public view.

The applicant's justification for the proposal rests largely on a view that:

1. the current planning vision for the site (mixed residential/retail/office facility with plaza that is sensitive to its neighbours) does not maximise the sites' potential and therefore is inappropriate, while a significant emphasis on retail is a higher and better use for the sites; and
2. the catchment area that this site would rely on has the capacity to support a level of retail development as proposed.

The intention to facilitate a development that preserves the existing heritage buildings (Captain Stirling Hotel is recognised as a heritage building but the status of the bottle shop is not clear) limit the height of the development, provide landscaping, accommodate parking needs, create an activity core where there is a high emphasis on pedestrian movement and provide traffic control will provide a proposal are also used to justify that the proposed scheme amendment will facilitate the vitality and physical amenity of the existing Village Hub.

Additional points raised to justify the proposal are: (refer to attachment 3)

1. there will be an increase in the level of employment in the area which is a requirement of directions 2031;

2. the urban form of the proposal aligns with the State's Activity Centres Policy – SPP 4.2;
3. the proposed use is consistent with the MRS and Town Planning Scheme No 2; and
4. traffic and movement will cater for all modes of transport with a focus on pedestrian access.

The applicant asserts that the proposal has merit and will result in orderly and proper planning. Please refer to attachment 4 for the detail of the applicant's comments and the corresponding officer response.

Consultation

Required by legislation: Yes No

Required by City of Nedlands policy: Yes No

Consultation for scheme amendments occurs only once a proposal has EPA consent to progress, which can only be obtained after the proposal has been initiated by Council.

The consultation period for scheme amendments is 42 days. Notices advising that the consultation period is commencing will be in the local press, on the City's website and include letters to adjoining property owners

Legislation

- *Planning and Development Act 2005*
- Town Planning Scheme No. 2

Budget/financial implications

This proposal does not have budget implications for the City at this stage other than the processing of the application which is within the current operating budget.

The proposal has no financial implications for the City.

Risk Management

Under Section 76 of the *Planning and Development Act 2005* the Minister has the power to order a Local Government to adopt a proposed scheme amendment.

Discussion

Following a detailed assessment of the proposal, which included seeking independent professional advice in areas where the City does not have the expertise internally, the City's identified numerous fundamental issues.

These were communicated to the proponents and resulted in a revised proposal, but this proposal does not address the fundamental issues.

Instead, the proposal has been repackaged and continues to cater for the original proposal. With the repackaging the proposal's focus has shifted to the proposed provisions to be inserted in Schedule V of the scheme which are worded to primarily progress the original concept, and away from the development proposal (plans and elevations) that was submitted with the original proposal. As Schedule V of Town Planning Scheme No. 2 are the primary control mechanisms that will determine how the site can be developed the proposed provisions are painting the same picture as the development proposal originally submitted.

The revised proposal also includes provisions that require that a Detailed Area Plan is created prior to the development approval stage. This serves to postpone the need to address the detail of any proposed development to a stage after the scheme has been amended or at very least initiated.

The proposed provisions are considered to be unacceptable, both in relation to the proposal and the processes they cater for. They are inadequate as a result of their in-depth focus on delivering the original Woolworth development which occurs at the expense of providing for other possible development options.

They also do not provide a comprehensive framework to inform a development assessment process as they are in some aspects so generic that they become meaningless and in others include detail that aligns with what would be expected for a development application.

The provisions relating to the proposed Detailed Area Plan are unacceptable as they do not provide for the collaborative process that is required between the proponents, community and the City to achieve the best possible outcome for the area.

Further details of the shortcomings of the proposed scheme text modifications are listed in attachment 5.

The proposal has the following fundamental issues:

1. The proposal does not align with the existing vision for the lots

While the proposal may meet some requirements of more generic state planning documents, it does not align with the existing planning framework applicable to the sites which is determined by Directions 2031, Central Metropolitan Sub-Regional Strategy and Development Control Policy 1.6 State Planning Policy 4.2 Activity Centres, as the scheme amendment does not provide for residential development although it specifies retail area provisions. For details please refer to attachment 6.

The proposed scheme amendment and/or statements within the proposal do not meet the provisions of the Stirling Highway Special Control Area Provisions. For details of the extent to which the special control provisions are not met refer to attachment 7.

From a traffic management perspective, the proposal is for the widening of Stirling Highway at Florence Road by 2 m to extend the existing painted median (to 3.5 m in width) to assist with right hand entry to and from the development at the intersection of Florence Road and Stirling Highway. This measure does not align with the intentions for Stirling Highway as detailed in the SHACS initiatives, and although intended to be temporary, may be in place for a very long time.

From a traffic perspective, this proposal with its recommendation for a manoeuvre onto Stirling Highway from Florence Road is contrary to the current vision for Stirling Highway.

2. The proposal is not sensitive to its adjoining landuses

An independent assessment of the retail sustainability of the proposal submitted by the applicant indicates that the extent of the trade area that the proponent has used to support the Retail Sustainability Assessment (RSA) for the proposed development is excessive. Consequently the likely impact of this proposal on current facilities is more significant than suggested by the applicant. While commercial competition is not a planning consideration, the potential loss of facilities would have a negative impact on the amenity of the area. It is in the interest of orderly and proper planning to ensure that the capacity of an area to support retail is not exceeded.

In absence of indisputable evidence that the proposed retail area of 5513 m² NLA is sustainable, a scheme amendment to facilitate that extent of floor area is premature.

Please refer to attachment 8 for the details supporting these comments.

The proposed amendment has the potential to adversely impact on its residential neighbours, not only as a result of its use and the consequences associates with the use, but also in relation to its physical form. In particular are matters such as service access, bulk and height. The proposed height limit, which is achieved, as a result of the sloping topography is significantly greater than would currently be permitted. The lack of strong provisions incorporated in the proposal to mitigate these impacts is a concern.

From a traffic perspective, while the capacity of the existing roads is adequate to cater for future traffic generation, the impact has not been appropriately evaluated. This is because the information provided is either inadequate or the estimates are based on data that has not been substantiated resulting in the following issues(refer to attachment 9 for additional information):

- a. the traffic assessment focuses on access for vehicles and service trucks but does not take pedestrian, cyclist or disabled access into account, and does not address safety objectives.
 - b. the proposal to create a signalised 4-way intersection at Florence Road / Boronia Avenue, directly linked with the existing signals at Dalkeith Road is considered to be unacceptable because of its proximity to the Dalkeith Road / Stirling Highway intersection and will result in build up in queue lengths and cause unnecessary vehicle delays.
 - c. only the afternoon peak period has been reviewed on the basis that shoppers would visit the supermarket after work. The reality is though that shopping also generates weekend peak periods and all peak periods have the potential to cause delays along Stirling Highway and at the key intersections.
 - d. side roads north of Stirling Highway including Boronia Avenue and Kinninmont Avenue which potentially may be impacted have not been considered within the analysis.
3. The proposal does not fully integrate with the sites' characteristics and history.

While the retention of the Captain Stirling Hotel seems to be assured and provisions to ensure that there is a sensitive relationship between the heritage buildings on the site and any new development is appropriate, the future of the existing drive through bottle shop is uncertain. The possibility that it is intended to be demolished exists which independent advice indicates to be undesirable. For details please refer to attachment 10.

While the arborculturalist report is acceptable it is not comprehensive and is motivated by the original design proposal. It is possible to achieve a design for a new development on this land

that is more sympathetic to the existing amenity of the area, and ought to be provided for in the proposed scheme provisions.

4. Potentially provides for a development that is out of character for the area.

The emphasis in the scheme amendment is to allow for a minimum retail floor area on the site, without specifying a maximum area for any one tenancy. This creates the potential that a future development comprises a single dominant use such as a grocery store.

Such a development would be inappropriate and out of character for the area and according to the independent assessment, not appropriate for a neighbourhood centre. Accordingly the provisions in the proposed amendment are considered to be inappropriate and cannot be supported.

Conclusion

The proposal appears to have been designed with a focus to fit a preconceived idea onto the site rather than moulding the desired use to fit within its context and vision for the site.

The assertions put forward regarding the planning merit and orderly and proper planning of this proposal are questionable. The proposed amendment has the following fundamental flaws:

The proposal

1. Does not address the planning vision for the lots;
2. Is not sensitive to its adjoining landuses as it does not provide for mitigating elements such as buffer areas, gradation of activity towards residential neighbours, or address/integrate with the existing commercial development to its west;
3. Does not fully integrate with the sites' characteristics and history; and
4. Advocates for the dominance of one use within the proposed additional floor space which will create a development that is out of character for the area.


The cumulative effect of these concerns is that the amendment cannot be considered to be acceptable and it is therefore recommended that this proposal is not supported and the scheme amendment is not initiated.

Attachments

1. Locality Plan.
2. Scheme Amendment Proposal.
3. Applicant's Justification of the Proposal.
4. Applicant's assertion that the proposal has merit and will result in orderly and proper planning.
5. Assessment of Proposed Schedule V provisions.
6. Summary of the proposals misalignment with the provisions of State Planning Documents for the site.
7. Summary of the proposal's misalignment with the Stirling Highway Design guideline provisions for the site.
8. Evaluation of the Retail Sustainability Assessment provided by the applicant.
9. Assessment of Traffic Analysis and comments in relation to Alternative Transport.
10. Summary of the proposal's shortcomings in regards to existing Heritage values on the site.

PD50.12 Claremont Nedlands Lions Club – Proposed Lease

Committee	13 November 2012
Council	27 November 2012

Applicant	City of Nedlands
Owner	City of Nedlands
Officer	Rebecca Boley – Property Management Officer
Director	Peter Mickleson - Director Planning & Development
Director Signature	
File ref.	CMS/216
Previous Item No's	N/A
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Purpose

The purpose of this report is to inform Council of the application by the Claremont Nedlands Lions Club to locate a shed for their use within the City of Nedlands and to seek endorsement of the proposed site and terms of the arrangement.

Recommendation to Committee

Council:

1. notes the proposal to lease land behind Drabble House situated on City freehold land (part of area with legal description Lot 50 on deposited plan 9922) to the Claremont Nedlands Lions Club; and
2. authorises the Mayor and Chief Executive Officer to sign a lease with the Lions Club for land behind Drabble House to locate a shed on the following conditions:
 - a. the Club apply for and receive planning approval before lease document is executed;
 - b. the City's standard lease template will be used;
 - c. the term will be ten (10) years with an option to renew for a further five (5) years;
 - d. the Club will apply for and receive a building permit before commencing works to erect the shed;

- e. **provision to remove shed at expiration of term or City of Nedlands to acquire any improvements at an agreed value; and**
- f. **provision in lease to include any conditions of a planning approval.**

Strategic Plan

KFA 4: Community Wellbeing

- 4.1 Provide and facilitate access to services and facilities required by the broader community, clubs and community groups.

KFA 5: Governance

- 5.1 Manage the City's resources in a sustainable and responsible manner.
- 5.8 Establish and actively manage a range of partnerships with government, private and not-for-profit sectors.

Background

In 2011 the Claremont Nedlands Lions Club discussed with the former Chief Executive Officer, the possibility of having a "shed" within the City of Nedlands for the Clubs use. One site suggested was the Broome Street Depot. Investigation into this proposal found that the Town of Claremont currently leases balance of the depot to its maximum occupancy and no area is available for another shed to be located for the Club's use. Other issues of access outside depot operational hours and security were also tendered to highlight the unsuitability of this location to have a shed for the Club's use.

The Lions Club had previously erected and used a shed at the "old Town of Claremont depot". On investigation by City of Nedland's officers it has been found that this shed can be recycled and relocated to another site.

On consultation with the City's parks department a preferred site behind Drabble House has been identified. (refer to attachment 1 for proposed area to locate the shed)

Proposal Detail

It is proposed to enter into a lease with the Claremont Nedlands Lions Club for an area of City freehold land located behind Drabble House to locate a shed for use by the Club, i.e. part of lot 50 on deposited plan 9922.

The proposed lease would be based on the City's standard lease template. It would be subject to a "peppercorn" rental.

The specifications of the shed to be recycled from the "old Town of Claremont depot" and relocated to area behind Drabble House are:

responsible for legal costs associated with preparation of the lease agreement.

Risk Management

Any risk associated with the proposal will be included in the lease, i.e. options open to parties on expiration of the lease i.e. City to acquire improvements at an agreed amount or Club to restore premises to former state. The lease will also be contingent on planning approval being received. Any conditions of a planning approval will be provided for in the lease to ensure local amenity is preserved.

Discussion

The Claremont Nedlands Lions Club has been in discussions for some time with the City of Nedlands to obtain a site to locate a shed for storage and use by the Club. The City of Nedlands has now identified a preferred site on an area behind Drabble House on the site which includes the City of Nedlands Library. This site is preferred for its safety and security as well as its vehicle accessibility, as required by the Club. The intended use of the shed by the Lions Club is for storage which would not adversely impact the neighboring area and any conditions of a planning approval will be provided for in the lease agreement.

Conclusion


The proposed lease of land to the Claremont Nedlands Lions Club for locating a storage shed will satisfy the requirements of the Club in order for them to carry on their community service based activities. This will in turn promote and facilitate the provision of community services and continue to develop a sense of community within the City of Nedlands with minimal impact on local amenity.

Attachments

1. Site location map for shed behind Drabble House on City freehold land.

PD51.12	John Leckie Pavilion, College Park (Reserve 1670) and terms of use by the Claremont Junior Football Club Inc.
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Committee	13 November 2012
Council	27 November 2012

Applicant	City of Nedlands
Owner	City of Nedlands
Officer	Rebecca Boley – Property Management Officer
Director	Peter Mickleson - Director Planning & Development
Director Signature	
File ref.	Lease/37
Previous Item No's	D46.10 – 27 July 2010
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Purpose

The purpose of this report is to inform Council of the agreed change in terms of use of the John Leckie Pavilion by the Claremont Junior Football Club Inc. and to seek endorsement of the proposed terms of the new arrangement.

Recommendation to Committee

Council:

1. **approves and endorses the earlier determination of the lease with the Claremont Junior Football Club Inc. dated 1 August 2010; and**
2. **approves and endorses a non-standard management licence arrangement for a ten (10) year term between the Claremont Junior Football Club Inc. and the City of Nedlands (“the management licence”) for use of an area in the lower level of the refurbished John Leckie pavilion known as “the clubroom” (which includes a storeroom) plus one (1) other storeroom and two (2) change rooms as per Attachment 1.**

Strategic Plan

KFA 3: Built Environment

- 3.4 Plan and develop the sustainable provision of community infrastructure and facilities with a focus on flexible and multiple uses.

KFA 4: Community Wellbeing

- 4.1 Provide and facilitate access to services and facilities required by the broader community, clubs and community groups.
- 4.2 Encourage, support and provide for a range of recreation and leisure opportunities, both active and passive.

Background

The refurbished John Leckie pavilion is a multi-level building which houses a piped organ, a hall, kitchen and toilet area on the top level. On the lower level there is a music practice room, a community room with kitchen area, storerooms, toilet areas, change rooms and a clubroom with kitchen area.

The Claremont Junior Football Club Inc. has been based at College Park and had their clubrooms in the John Leckie pavilion for over 50 years. It has been stated that the John Leckie pavilion is a "spiritual home" of junior football in the area. The Club has grown to over 350 members in the past five (5) years.

The Club's current lease has an initial term which expires on 31 July 2020 with a further option to renew until 31 July 2025. The leased area is based on the floor plan of the pavilion prior to refurbishment. The lease is on the terms of the City's standard lease in that maintenance of the premises are the responsibility of the club as are utility and insurance charges and the club pays a peppercorn rental. Within the lease agreement there is a "redevelopment clause" whereupon redevelopment of the pavilion the City can give the Club three (3) months notice to terminate the lease agreement without obligation to pay any compensation to the lessee. This clause was incorporated into the lease agreement as the City was cognisant of plans to upgrade the pavilion at the time agreement was made.

Council considered a report on the 28 September 2010 CM22.10 relating to the City's application to the Department of Sporting and Recreation for funding to upgrade the John Leckie pavilion. This report stated that no sports club had been asked to financially contribute to the upgrade and that Claremont Junior Football Club would no longer have an exclusive lease in an area of (the) upgraded pavilion as it was intended to be shared use.

The City is now close to completing the works to upgrade the John Leckie pavilion and seeks to finalise arrangements with the Club for future use of the facility.

Western Suburbs Cricket Club also uses College Park as their home ground and seeks to use the premises in the summer season when the Junior Football Club is not using the facility.

Officers from the City have met with the Junior Football Club and both parties have agreed that a management licence for a ten (10) year term would serve both City and Club interests.

Key Relevant Previous Decisions:

Item D46.10 considered on 27 July 2010 – Current existing lease between City and Club.

Item CM22.10 considered on 28 September 2010 – Consideration and approval of funding for the refurbishment of the lower level of the John Leckie Pavilion.

Proposal Detail

It is proposed that the City and Club determine the lease earlier than date of expiration and that the parties enter into the management licence for a term of ten (10) years commencing on 1 March 2013. The Club shall use the premises on the following terms:

1. Approximately 16 hours per week which will be booked through the City's booking system.
2. For a six (6) month period each year, being the football season.
3. Pay a management licence fee of \$1291 per period, (this fee is calculated using a formula based on approximate costs involved with running and maintaining the premises proportional to the Clubs use of the premises).
4. This fee is to be reviewed after the first year to ensure the appropriate fee is paid (as the building is newly refurbished an estimate of maintenance and utility costs was made in order to calculate the licence fee, after the first year the actual amount of these costs will be obtainable) and then reviewed every year thereafter based on the Consumer Price Index (CPI).
5. Club will have other responsibilities as per standard management licence requirements, including: to keep premises clean and tidy, to maintain public liability insurance.
6. The City will have responsibility as per standard management licence which includes the maintenance of the premises, payment of utilities and building insurance.

Pursuant to a delegated authority the Chief Executive Officer and Mayor can enter into a standard management licence on the City's behalf. The term for the "standard" management licence is a three (3) year period. This proposal is for a ten (10) year term, therefore a "non-standard" management licence which requires Council approval.

Consultation

Required by legislation: Yes No

Required by City of Nedlands policy: Yes No

Consultation type: The City has consulted with the Claremont Junior Football Club Inc. and agreed the terms of the proposal.

Legislation

- *Land Administration Act 1997* – section 18 – Ministers consent to licence required.
- *Local Government (Functions and General) Regulations 1996*

The non-standard management licence to the Claremont Junior Football Club is an "exempt disposition" of land as defined in Regulation 30 (2)(b) – the land is disposed of to a body that is charitable in purpose and members are not entitled to receive pecuniary profit for the body's actions.

Budget/financial implications

Budget:

Within current approved budget: Yes No

Requires further budget consideration: Yes No

Financial:

Under the proposed new arrangement the Club will pay a licence fee which will ensure the City recoups a portion of the costs associated with running and maintaining the premises while still allowing other users to share in the use of the premises.

Risk Management

Any risk associated with this proposal will be managed in the content of the non-standard management licence for a term of ten (10) years. i.e. the extended term beyond the three (3) years of a standard management licence assures the club of a continued future at the premises and each parties' responsibilities are defined with regard to payment of utilities, maintenance, insurance etc.

The risk involved with the Club changing from a lease to a management licence is managed in the consultation process between the City and the Club and further documented in the management licence to ensure parties are in agreement. The change to a non-standard management licence also minimises the risk of any lost opportunity by an interested member or group in the community to use the premises had the premises otherwise been under a lease agreement.

Discussion

The newly refurbished John Leckie pavilion is an excellent facility that is designed and intended for multiple uses and by multiple users. The facility lends itself well to the ideals of the City to provide a place of recreation, both active and passive, which is for both flexible and multiple uses and accessible to the broader community. On this basis then a user arrangement of a management licence supports these ideals in that it allows for shared use of the premises.

A change from a lease arrangement with the Club to a non-standard management licence on a "seasonal" basis, for the period of the football season in each year, will ensure that the City provides the newly refurbished facility at the John Leckie Pavilion to the greater community on a "shared use" basis. The club will continue to be the primary user of the facility during the winter and football season which will ensure the clubs history and association with the grounds as well as the pavilion are preserved. The extended term of ten (10) years beyond the standard management licence of a three (3) year term will assure the Club of its continued future at this facility guaranteeing them the desired tenure while still providing other clubs and users with the opportunity to enjoy the facility.

In the part of the year that the Club is not using the premises the City would be able to enter into a similar arrangement, a management licence with the cricket club.

Through a management licence the City will retain responsibility for maintenance and repair to the newly refurbished building ensuring desired control over the new facility and at the same time recouping some of the associated costs by charging the licence fee.

Conclusion

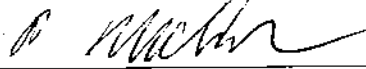
The refurbished John Leckie pavilion is a City asset intended for shared use. A management licence facilitates this relationship between user and space therefore it would be appropriate for the Claremont Junior Football Club Inc. to use the pavilion on a management licence basis. The Club has in the past, and for a considerable length of time had a lease for the premises and so a longer term of ten (10) years beyond the standard three (3) year management licence term would ensure the history and association between club and pavilion is recognised and preserved.

Attachments

1. Diagram of floor plan of newly refurbished John Leckie pavilion. Intended premises for use by the Claremont Junior Football Club Inc. is highlighted in green.

PD52.12	Swanbourne Beach Café (The Naked Fig Café) – Deed of Variation of Sublease
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Committee	13 November 2012
Council	27 November 2012

Applicant	City of Nedlands
Owner	State Lands Department
Officer	Rebecca Boley – Property Management Officer
Director	Peter Mickleson - Director Planning & Development
Director Signature	
File ref.	Lease/53
Previous Item No's	Item D81.10, on 23 November 2010 Item D73.10 on 26 October 2010 Item 13.7 on 10 February 2009 Item 13.5 on 11 December 2007 Item 13.4 on 14 August 2007 Item 17.3 on 22 May 2007
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Purpose

The purpose of this report is to inform Council of the decision of the Western Australian Planning Commission issued on 13 March 2012 by letter to the City of Nedlands in relation to an application for review by the State Administrative Tribunal. This report also seeks Council endorsement of the proposed terms of the Deed of Variation of Sublease to accord this decision.

Recommendation to Committee

Council:

1. re-affirms Council's decision of 23 November 2010 giving delegation to the Chief Executive Officer and Mayor to sign a variation to the sublease in strict compliance with the Western Australian Planning Commission (WAPC) decision.
2. notes the decision of the Western Australian Planning Commission (WAPC) issued by letter dated 13 March 2012 (as per Attachment 1) in response to application for review to State Administrative Tribunal (SAT) on application No. 08-50124-1 by the Naked Fig Pty Ltd; and

3. **authorises the Mayor and Chief Executive Officer to sign a Deed of Variation of Sublease with Naked Fig Pty Ltd and Greer Julia Marns and Lorna Alexandra Marns in strict accordance with the Western Australian Planning Commission (WAPC) decision referred to above, specifically on the following terms:**
 - a. **Approved hours of operation are as follows:**
 - i. **Core Hours**

Sunday 7 am to 10 pm;
Monday to Thursday 7 am to 10 pm;
Friday and Saturday 7 am to 12 midnight; and
New Year's Eve 7 am to 1 am the following day.
 - ii. **Extended Hours**

Sunday 6:30 am to 10 pm;
Monday to Thursday 6:30am to 11pm;
Friday and Saturday 6:30am to 12 midnight; and
New Year's Eve 6:30 am to 1 am the following day.
 - iii. **If any substantiated complaints are received in respect to the extended hours, approval for the extended hours will be rescinded and the hours of operation will revert to the core hours. (Substantiation of complaints will be determined by City of Nedlands after an officer/s of the City has attended the site, and has verified that the approved Noise Management Plan dated February 2012 has not been complied with and/or any noise or disturbance arising from the café has exceeded noise levels regulated by the *Environmental Protection (Noise) Regulations 1997*).**
 - b. **The approved Noise Management Plan dated February 2012 (refer to attachment 2) must be implemented at all times during operation of the premises.**
 - c. **Commencement of the extended hours of operation granted under Condition 2 is not to occur until the bi-fold doors approved under this application have been constructed and are operational and the City of Nedlands has been notified and completed an inspection of the doors.**
4. **Directs the City of Nedlands Administration to ensure that the Sublessee (Naked Fig Pty Ltd) act in strict compliance with the Deed of Variation of Sublease.**

Strategic Plan

- KFA 5: Governance
- 5.6 Ensure compliance with statutory requirements and guidelines.
 - 5.8 Establish and actively manage a range of partnerships with government, private and not-for-profit sectors.
 - 5.9 Identify, manage and seek to minimise risk.

Background

The Swanbourne café located at 278 Marine Parade Swanbourne is a single storey purpose building constructed in 2009 by Naked Fig Pty Ltd upon their successful submission in the public tender process issued by the City of Nedlands.

The land on which the café resides is Crown land and has been leased to the City of Nedlands from 15 January 2009 for a period of 21 years with the option to renew for a further 10 year term ("the head lease"). The City in turn subleases the land to Naked Fig Pty Ltd and Greer Julia Marns and Lorna Alexandra Marns with the sub-lease following the same term as the head lease.

Currently, the sublease agreement for the premises of the Swanbourne Beach Café, also known as the Naked Fig Café, at clause 41 defines the maximum hours of operation as being 7 am-10 pm seven days a week, except when a function is held on a Friday and Saturday night in which case premises must be vacated by midnight.

The Naked Fig Café has attracted complaints regarding noise from neighbouring residents. Several residents have opposed an extension to the café's hours of operation primarily on the basis of noise concerns.

On 23 November 2010 Council considered an application to the WAPC by Naked Fig Pty Ltd to install bi-fold doors and extend operational hours. Council accepted installation of bi-fold doors but with regard to extended hours chose to invoke:

Regulation 11(da) - Council considered it appropriate to better define operational hours and lease management and did not approve the additional hours as it considered the noise issues had not been addressed and the increase would adversely impact the local amenity.

However Council further resolved:

Council Resolution

Clause 5:

Council gives delegation to the CEO and Mayor to sign a variation to the sublease in strict compliance with the WAPC decision and instructs the CEO to ensure that the Applicant observes strict adherence to the Operational Times and Conditions so stated under those conditions, in the said sublease - until such time that those operational times and conditions are statutorily amended.

Since Council considered this application by Naked Fig Pty Ltd to the WAPC and gave resolution as mentioned above, there has been an Application for Review by the State Administrative Tribunal (SAT). The City of Nedlands had representatives at and took part in this review process. The outcome of the review was a decision to allow the development application on the following basis:

1. *Approved hours of operation are as follows:*
 1. *Core Hours:*
Sunday 7 am to 10 pm;
Monday to Thursday 7 am to 10 pm;
Friday and Saturday 7 am to 12 midnight; and
New Year's Eve 7 am to 1 am the following day.
 2. *Extended Hours*
Sunday 6:30 am to 10 pm;
Monday to Thursday 6:30 am to 11 pm;
Friday and Saturday 6:30 am to 12 midnight; and
New Year's Eve 6:30 am to 1 am the following day.
 3. *If any substantiated complaints are received in respect to the extended hours, approval for the extended hours will be rescinded and the hours of operation will revert to the core hours. (Substantiation of complaints will be determined by City of Nedlands after an officer/s of the City has attended the site, and has verified that the approved Noise Management Plan dated February 2012 has not been complied with and/or any noise or disturbance arising from the café has exceeded noise levels regulated by the Environmental Protection (Noise) Regulations 1997).*
 4. *The approved Noise Management Plan dated February 2012 (which was developed through the SAT review process) must be implemented at all times during operation of the premises.*

5. *Commencement of the extended hours of operation granted under Condition 2 is not to occur until the bi-fold doors approved under this application have been constructed and are operational and the City of Nedlands has been notified and completed an inspection of the doors.*

The City of Nedlands requested McLeods Barristers and Solicitors to advise on the City's position regarding the WAPC decision and the impact this had on the sublease. Advice was received by letter of 14 June 2012. The advice provided was that the City is not legally obliged to vary the terms of the sublease in line with the WAPC decision, so long as no law is contravened. The advice also states that the City as sublessor is not legally obliged to enforce the terms of the sublease, again so long as no law is contravened.

The Mayor and Chief Executive Officer were both asked to sign a deed of variation of sublease (which would be in strict accordance with the decision of the WAPC), under delegated authority of Council Resolution as per Item D81.10 on 23 November 2010. The Mayor declined to use this delegation to sign the deed on the basis that he considered it to be a matter of considerable importance and requiring full Council consideration.

Key Relevant Previous Decisions:

1. Item 17.3 - 22 May 2007 – Considerations in the process regarding tender submission by Naked Fig Pty Ltd. (advertising and public notice).
2. Item 13.4 - 14 August 2007- Tender submission from Naked Fig Pty Ltd considered by Council.
3. Item 13.5 - 11 December 2007 – Recommended approval and conditions of development for Swanbourne Beach café and car parking.
4. Item 13.7 - 10 February 2009 – Current lease and sublease agreements for premises at Swanbourne Beach Café.
5. Item D73.10 - 26 October 2010 - Application to vary sublease to accord the WAPC approval of extended hours of operation in 2008. (Extended hours being 7 am -12 midnight Friday and Saturday)
6. Item D81.10, - 23 November 2010 – Development application from Naked Fig Pty Ltd to the WAPC.

Proposal Detail

It is now proposed, as per Council's earlier resolution that the City enter into a Deed of Variation of Sublease with Naked Fig Pty Ltd and Greer Julia Marns and Lorna Alexandra Marns in strict compliance with the decision of the WAPC issued earlier this year.

The proposed terms for the Deed of Variation of Sublease are:

1. To define core hours and extended hours as;

Core Hours Sunday to Thursday 7 am – 10 pm
Friday and Saturday 7 am – 12 midnight
New Year's Eve 7 am- 1 am the following day

Extended Hours Sunday 6:30 am – 10 pm
Monday to Thursday 6:30 am – 11 pm
Friday and Saturday 6:30 am – 12 midnight
New Year's Eve 6:30 am – 1 am the following day.

2. If any substantiated complaints are received in respect to the extended hours, approval for the extended hours will be rescinded and the hours of operation will revert to the core hours.
3. The approved Noise Management Plan dated February 2012 must be implemented at all times.
4. Naked Fig Pty Ltd is to install the bi-fold doors as described in the development application and receive approval upon inspection by City of Nedlands officer/s before extended hours of operation can commence.
5. Substantiation of complaints will be determined by the City of Nedlands after an officer/s of the City has attended the site, and has verified that the approved Noise Management Plan dated February 2012 has not been complied with and/or noise or disturbance arising from the café has exceeded noise levels by the *Environmental Protection (Noise) Regulations 1997*.

Consultation

Required by legislation: Yes No

Required by City of Nedlands policy: Yes No

The Minister for Lands, as proprietor of the land will be notified of the Deed of Variation of Sublease should Council endorse the agreement.

Legislation

- *Environmental Protection (Noise) Regulations 1997.*

Budget/financial implications

Budget:

Within current approved budget: Yes No

Requires further budget consideration: Yes No

Financial:

Naked Fig Pty Ltd will be liable for legal costs incurred in preparation of the Deed of Variation of Sublease.

Risk Management

The risks involved with this proposal are primarily related to public pressure and scrutiny in relation to extended hours of operation. The issue here would come from the perception that increased hours would result in increased noise and disturbance to the neighbouring residents. This risk is managed through the adoption of the Noise Management Plan as approved in the SAT review process (in which the City of Nedlands took part) as well as installation and use of the bi-fold doors. Both instruments will work together to mitigate the issues relating to noise which may impact the neighbouring residents during the café's hours of operation.

There is also risk involved in continuing on with the current sublease agreement, i.e. without a specific Noise Management Plan. The risk relates to the likelihood of ongoing noise complaint and perceived disturbance to neighbouring residents.

Discussion

Noise appears to be the primary issue and concern of the surrounding residents in their opposition to the operations of the Naked Fig Café. "Noise" is governed by the *Environmental Protection Act 1986* and regulated by the *Environmental Protection (Noise) Regulations 1997*. In this legislation it is apparent that there are "prescribed levels" for acceptable noise. Noise beyond these levels is not permissible. As mentioned by McLeods in their advice, if the City as sublessor allows the sublessee – Naked Fig to continue to make noise beyond the "prescribed levels" the City could in turn also be liable for such a contravention. It is therefore recommended that the City ensures the sublessee adopts and follows a noise management plan.

Adoption of the Noise Management Plan would ensure the Naked Fig Pty Ltd have a clear guideline to refer to in determining "acceptable noise levels". The plan would ensure the operators and staff of the Naked Fig Café have a defined and approved process to follow in operating the café. The installation of the bi-fold doors and the directed use thereof will minimise the noise emitted from the café.

The proposal outlined above would enable the City's Administration to more effectively measure and control any complaint of noise in relation to the operations of the Naked Fig café by outlining a standard of acceptable noise level.

Currently the sublease agreement makes no requirement for a specific noise management plan. The adoption and enforcement of a comprehensive plan such as that approved in the SAT review process would give the sublease document the necessary integrity. As well the neighbouring residents would be given assurance of a measurable standard of acceptable noise level which they could expect and any deviation from that standard can be more effectively managed.

Amending the sublease on the aforementioned terms would also ensure the City and the neighbouring residents have a protection mechanism in the form of the "reversion" clause whereby if any complaints of noise are substantiated the operational hours will revert to the core hours.

Amending the sublease to accord the WAPC decision would be for the City to act as a cohesive governing body with the WAPC and SAT. By upholding this decision of a higher authority (arrived at through a process in which the City participated) and making the proposed variation of the sublease, there would be minimal opportunity for disparity and confusion as to what accepted conduct is, thereby reducing any opportunity for further appeal to the State Administrative Tribunal in this matter.

Conclusion

Considering all the justifications for this proposal as discussed above it is recommended that the City's sublease agreement be amended in strict compliance with the WAPC decision. In particular the City's potential risk and liability with regard to ongoing complaints of noise and disturbance to neighbouring residents through the café's operations, highlights the need to more effectively manage the noise levels.


Although there is some opposition to the proposed extension to operating hours it is Administration's opinion that the proposal will strike a balance between the management of noise issues and the operations of the café. Based on the above, it is recommended that Council endorse and approve the proposed variation to the sublease agreement with Naked Fig Pty Ltd and Greer Julia Marns and Lorna Alexandra Marns.

Attachments

1. Letter with decision of the Western Australian Planning Commission relating to application by Naked Fig Pty Ltd dated 13 March 2012
2. The Naked Fig Café – Noise Management Plan 278 Marine Parade, Swanbourne February 2012

PD53.12	Highview Park - Larry Francis Foley and Andrew Jonathon Wilson (of Sand Volley Australia Pty Ltd) – Termination of Sublease
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Committee	13 November 2012
Council	27 November 2012

Applicant	City of Nedlands
Owner	City of Nedlands
Officer	Rebecca Boley – Property Management Officer
Director	Peter Mickleson - Director Planning & Development
Director Signature	
File ref.	Lease/73
Previous Item No's	Item C148.97 - 23 September 1997 Item F27.97 - 25 February 1997
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Purpose

The purpose of this report is to seek Council's endorsement to terminate the current tenancy arrangement with Larry Francis Foley & Andrew Jonathon Wilson who operate the business of Sand Volley Australia Pty Ltd ("Sand Volley") at Highview Park on the corner of Smyth Road and Verdun Street.

Executive Summary

- Foley & Wilson operate a business that is Sand Volley which has a profit objective. This objective contravenes the general use of an "A" class reserve.
- The Bowling Club has conveyed its position that it has concerns about the conduct and the operation of Sand Volley and therefore it is not clear whether the Club would agree to a future sublease with Foley & Wilson.
- Foley & Wilson continue to maintain illegal structures despite several attempts by the City to request remedy.
- Issuing a notice to Foley & Wilson to vacate the reserve is an option open to the City under the terms of the sublease agreement held over since expiration on 11 August 2004.

Recommendation to Committee

Council:

- 1. notes the current tenancy at Highview Park of Larry Francis Foley and Andrew Jonathon Wilson ("Foley & Wilson) as sublessee held over from an expired sublease agreement on 11 August 2004 ; and**
- 2. approves the termination of the said sublease.**

Strategic Plan

KFA 5: Governance

- 5.1 Manage the City's resources in a sustainable and responsible manner.
- 5.6 Ensure compliance with statutory requirements and guidelines.
- 5.9 Identify, manage and seek to minimise risk.

Background

Highview Park, more formally noted as Reserve 22384 is an "A" class reserve vested in the City for the purpose of recreation pursuant to a management order. The management order confers on the City the power to lease for up to a maximum term of 21 years, subject to the Minister for Lands approval.

The Hollywood Subiaco Bowling Club ("Bowling Club") leases a portion of land at Reserve 22384, Highview Park on Smyth Road and Verdun Street pursuant to a lease dated 11 July 2003.

The City, Bowling Club and Foley & Wilson entered into a deed of sublease dated 24 September 1997 ("the Sublease"). (refer to attachment 1). The subleased area of land is contained within the Bowling Club's leased area and was intended for the purpose of providing a venue for the playing of volleyball. As required by the sublease Wilson & Foley were required to pay \$300 per month in rent to the Bowling Club. The Minister for Lands approved this sublease.

The sublease expired on 11 August 2004. The City have allowed Foley & Wilson to continue to occupy the site and continued to operate a beach volleyball (and netball) competition.

The City has in the past been reluctant to formally extend the arrangement in part due to the fact that there have been plans to redevelop the reserve, specifically the Highview Park Master Plan.

Several structures have been constructed within the subleased area which have not obtained planning approval or a building permit.

Wilson & Foley operate Sand Volley as a business. In March 2011 the City met with Foley & Wilson and discussed the option to become an incorporated association with "not for profit" making purposes. Wilson & Foley declined to do so, on the basis that a "for profit" model suited their operation of the beach volleyball competition.

In a letter of advice dated 11 May 2011 McLeods Barristers and Solicitors ("McLeods") advised the City that by allowing Foley & Wilson to remain in the subleased area beyond the expiration date of the sublease agreement the City and the Bowling Club had permitted Wilson & Foley to "hold over" the sublease, which in effect allows sublessee to continue occupation on the same terms and conditions.

The City instructed McLeods to write to the Minister for Lands to see if the Minister would consent to the grant of a sublease to Foley & Wilson. By letter of 24 August 2011 the Minister stated that it would be willing to consent to a new sublease to Foley & Wilson, notwithstanding the profit objective of the sublessee.

The City has maintained that any further sublease agreement would only be considered once illegality of structures is remedied. The City and Wilson & Foley have traded much correspondence and met several times since 2011 to discuss the matter and determine a "way forward".

On 23 December 2011 an internal memorandum ("the memo") was distributed to all Councillors, Mayor and Chief Executive Officer with an update of the tenancy and occupation on Highview Park by Foley & Wilson but referred to them as Sand Volley. The memo noted the history of the tenancy as outlined above noting the non-compliant structures and further discussing the issue of service and sale of alcohol.

The memo noted that Foley & Wilson had notified the City that in the past they had operated a satellite bar on their site. The liquor was purchased from the Bowling Club. This arrangement ceased after an inspection by the liquor licensing authority and an associated change in boundary of the Bowling Club's liquor licence. Sand Volley was no longer within the licenced area of the Bowling Club. Sand Volley have told the City that consumption of alcohol is a part of the social aspect of Sand Volley and the loss of their ability to supply alcohol onsite has had an adverse effect on the social aspect of the activity. Foley & Wilson have asked the City if they would support an application for a liquor licence which the City declined as they are of the view that there is no requirement for more than one liquor licence within the area leased to the Bowling Club and consumption by Sand Volley participants should be within the Bowling Club's licenced area.

The memo also noted that the City requested Foley & Wilson to notify the City by the 31 January 2012 as to whether they intended to pursue a sublease conditional on the removal of the illegal structures or vacate the premises.

In September 2012 the City met with Chris Glasson (Manager of Sand Volley) and Andrew Wilson to discuss the situation. They both restated their position that they required an assurance from the City of a future tenancy agreement to remain on the reserve before they could properly address the issue of illegal structures.

The City has sought confirmation of the Bowling Club's position as sublessor, as to Foley & Wilson continuing as the sublessee within their leased premises. The Bowling Club has conveyed their concerns with a continued sublease arrangement, with specific concern for the preservation of their liquor licence. The Bowling Club maintains that Sand Volley players consume alcohol on the Sand Volley site. Sand Volley maintains that they do not supply alcohol and have not since their exclusion from the Bowling Club's liquor licence, but agree that alcohol is consumed on site by their patrons. This consumption of alcohol outside the Bowling Club's leased area is illegal.

The City requested and received from McLeods, a letter of advice dated 18 October 2012 which discussed the options open to the City to consent to grant further sublease to Foley & Wilson or to require them to vacate the Reserve.

The advice noted the process for each option. If the City were to consent to further grant of sublease the process required for the City to follow would be pursuant to section 3.58 of the *Local Government Act 1995* which requires any disposition (including a lease) of its land to be by auction, public tender or following advertising of the proposed disposal in accordance with section 3.58(3). As Foley & Wilson are already in occupation (i.e. sublessee already selected) the advertising avenue is preferable. Requirements for this are outlined in section 3.58(3) as:

- (3) *A local government can dispose of property other than under subsection (2) if, before agreeing to dispose of the property —*
 - (a) *it gives local public notice of the proposed disposition —*
 - (i) *describing the property concerned; and*
 - (ii) *giving details of the proposed disposition; and*
 - (iii) *inviting submissions to be made to the local government before a date to be specified in the notice, being a date not less than 2 weeks after the notice is first given; and*
 - (b) *it considers any submissions made to it before the date specified in the notice and, if its decision is made by the council or a committee, the decision and the reasons for it are recorded in the minutes of the meeting at which the decision was made.*

- (4) *The details of a proposed disposition that are required by subsection (3) (a) (ii) include —*
- (a) *the names of all other parties concerned; and*
 - (b) *the consideration to be received by the local government for the disposition; and*
 - (c) *the market value of the disposition*

Foley & Wilson are not exempt from the provisions above (as defined in regulation 30 of *Local Government (Functions and General) Regulations 1996*) due to their profit making objective and their exclusive use of the subleased area. If the proposed sublease were to be advertised there is potential for adverse submissions against the proposal which could affect Council's decision to grant a further sublease.

Any new sublease arrangement would need to be agreed by the three parties, the City as head lessor, the Bowling Club as sublessor and Foley & Wilson as sublessee. The City has received application from Foley & Wilson to renew the sublease.

The process for requiring Foley & Wilson to vacate the reserve is discussed below.

Key Relevant Previous Decisions:

1. Item F27.97 on 25 February 1997 – Council approved the Bowling Club's proposal to allow a "beach volley ball organisation" to use a part of their leased premises for the playing of volley ball. It was noted that alternative use for volleyball conflicted with intended use of premises in their lease which would require a Deed of Variation of Lease to be prepared.
2. Item C148.97 on 23 September 1997 – Council approved the signing and sealing of Hollywood Subiaco Bowling Club's Deed of Variation as noted in Item F27.97.
3. On 24 September 1997 the Mayor and Chief Executive Officer signed and the City's common seal was affixed to a Deed of Sublease (refer to attachment 1) which included provision for the variation to the Bowling Club's lease.

Proposal Detail

The proposed course of action is for the City to issue to Foley & Wilson a notice requiring them to yield up the subleased area and comply with their obligations pursuant to clause 2.12 of the sublease agreement (refer to attachment 1) - the sublessee Foley & Wilson is required to remove all sand, nets and any other equipment, and structures erected by them on the premises.

Consultation

Required by legislation: Yes No

Required by City of Nedlands policy: Yes No

Consultation type:

- The City has consulted on many occasions with representatives of Sand Volley including Andrew Wilson with the aim of continuing their presence at Highview Park in a way that is both legal, responsible and within requirements of an "A" class reserve. The City has offered to assist Foley & Wilson to form an incorporated association to meet not for profit purposes which has declined.
- The City has met and spoken with the Bowling Club as sublessor to determine its position in this matter.
- There has been much internal consultation between property services and community development in this matter.

Legislation

- Section 3.58 *Local Government Act 1995*.
- Regulation 30 of the Local Government (Functions and General) Regulations 1996 – which outlines exceptions to section 3.58 of Local Government Act requirements. This sublease does not fall within this category because it is an exclusive use agreement to an entity which has a clear profit making objective.

Budget/financial implications

Budget:

Within current approved budget: Yes No

Requires further budget consideration: Yes No

Financial:

Under the above proposal the Bowling Club will not receive any further rental from the sublessee however the Bowling Club has said they are willing to accept this.

Risk Management

The main risk of continuing with the current tenancy arrangement is of injury to a patron or member of the public that is associated with unapproved buildings, particularly in a setting where the City has been informed of the possibility of illegal alcohol consumption. Risk to persons is the overriding consideration in recommending this proposal. Public safety is a paramount consideration for the City, especially where it involves activity on City reserve land. The City requires developments and works in the City to be carried out upon the granting of and in accordance with both planning and building approvals. The structures within the subleased area have not been constructed with the required approvals in place. This risk is managed by requesting Foley & Wilson to yield up the premises in the manner proposed.

The main risk associated with terminating the current tenancy arrangement is the potential for public pressure on Council from supporters of and participants in the Sand Volley operation.

Discussion

The termination of the current sublease arrangement between the City, the Bowling Club and Foley & Wilson is proposed for the following reasons:

- Foley & Wilson operate a business that is Sand Volley which has a profit objective. This objective contravenes the general use of an "A" class reserve.
- The Bowling Club has conveyed its position that it has concerns about the conduct and the operation of Sand Volley and therefore it is not clear whether the Club would agree to a future sublease with Foley & Wilson.
- Foley & Wilson continue to maintain illegal structures despite several attempts by the City to request remedy.
- It is an option open to the City under the terms of the sublease agreement held over since expiration on 11 August 2004.

While all opportunities for sport and physical activity are valued, in this instance the benefits of physical activity need to be weighed against the risks associated with the way that activity is provided. The City is informed that a bus load of school children use the Sand Volley facilities regularly. Users would reasonably assume that, because the facility is on a reserve managed by the City, reasonable safety standards are being met. However, the City has to date had little success in ensuring that the proprietors of Sand Volley address issues of concern in relation to their buildings.

The proposal seeks to manage the risk associated with the illegal structures and alleged unauthorised consumption of alcohol on a City reserve. The proposal also seeks to discourage for profit business activity on the City's "A" class reserves.

Conclusion

While the City supports and promotes opportunities for physical activity and recreation the City must ensure that these activities are conducted in accordance with practices of good governance, namely that the City's resources are managed in a sustainable and responsible manner. The City should also ensure compliance with statutory requirements and guidelines. The City must also identify manage and seek to minimise risk. To achieve all of the above the City's Administration proposes the above course of action.

Attachments

1. Deed of Sublease between the City, the Hollywood Subiaco Bowling Club Inc. and Larry Francis Foley and Andrew Jonathon Wilson dated 24 September 1997.