Ordinary Meeting of Council
27 February 2013

4.1 PROPOSED LEASE OF CITY DRAIN RESERVE 48924 (LOT 8006) FARRALL ROAD, JANE BROOK FOR PRIVATE CAR PARK

Ward: (Midland Ward) (Asset Management)

Disclosure of Interest: Nil

Authorised Officer: (Executive Manager Operations)

KEY ISSUES

- At its meeting of 15 August 2012, Council generally resolved to seek the State of WA's approval to amend its Drain Reserve 48924 (Lot 8006) Farrall Road, Jane Brook from "Drainage" to "Drainage & Car Parking" with power to lease to consider a proposal by the owner of the adjacent Lot 750 to lease the City's drain reserve to construct a car park to accommodate the commercial development of their lot. It was further resolved that, subject to approval being granted by the State, obtain a market rental valuation and advertise the proposed lease prior to referring it back to Council for consideration.

- State Land Services advice, dated 3 December 2012, is that the City's current Management Order has been revoked and a new Management Order issued to reflect the change of purpose of the Reserve to "Drainage & Car Park" with power to lease for a term not exceeding 21 years subject to the Minister for Lands consent.

- A market valuation was subsequently obtained from a licensed valuer which advice is contained within the body of the report.

It is recommended that the Council resolve, subject to conditions, to offer to lease its Drain Reserve 48924 to the owner of the adjacent Lot 750 Farrall Road, Jane Brook for an initial term of twenty one years for the purpose of the Lessee constructing a car park to accommodate the commercial development of their Lot 750.

BACKGROUND

Applicant: Planning Solutions for and on behalf of Churchlands Nominees Pty Ltd
Director/Secretary: Corrado Cusma Piccione Cadetta

In 2012 City officers were approached by Planning Solutions, acting on behalf of the owner of Lot 750 (Street No 877) Farrall Road, Jane Brook (the applicant) seeking to lease the City's adjoining Drain Reserve 48924 (Lot 8006) for the purpose of constructing and operating a car park to facilitate the proposed commercial development of their Lot 750.
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Reserve 48924 was created on Deposited Plan 47034 as Lot 8006 and ceded to the Crown (State of WA) free of cost in 2006, pursuant Section 152 of the Planning & Development Act 2005 (formerly Section 20A of the Town Planning & Development Act 1928) for the specified purpose of "Drainage". A Management Order for the Reserve was subsequently issued to the City for the purpose of "Drainage" only and did not provide power to lease.

The proposal was the subject of a briefing to Council presented at its meeting of 20 June 2012 and subsequently considered by Council at its meeting of 15 August 2012 where it resolved to:

1) Write to the Department of Regional Development & Lands - State Land Services seeking the Minister for Lands approval to change the purpose of the City’s Management Order for Reserve 48924 Farrall Road, Jane Brook from "Drainage" to Drainage & Car Parking" and the granting to it of power to lease for up to a period of 21 years;

2) Subject to the Minister for Lands approving the City’s request under point 1 of the recommendation, the City will:

(a) at the expense of the applicant, obtain a current annual rental market valuation as required;
(b) Proceed to advertise the proposed lease in accordance with the Local Government Act 1995;
(c) On closure of the advertising period for the proposed lease refer the matter back to Council for consideration.

3) Advise the applicant that completion of points 1 and 2 above should not be construed as the Council granting automatic approval to the proposed development, which is subject to a separate application to commence development and will be assessed on its merits in accordance with Local Planning Scheme No. 17.

DETAILS

Following the City’s request, State Land Services (SLS), by letter of 3 December 2012, advised the City that documentation to support the creation of Reserve 48924 (Lot 8006) for the amended purpose of "Drainage & Car Parking" was lodged on 29 November 2012 and that the current Management Order has been revoked and a new Management Order issued to reflect the change in purpose with power to lease for up to 21 years subject to the Minister for Lands consent.

In accordance with Council’s resolution, City officers obtained a current market rental valuation from a licensed valuer, who determined the current annual market rental valuation, based upon a level ready to build site, at $52,000pa exclusive of GST. However, the subject site comprises a drainage basin and the Lessee must first construct a suspended concrete slab above the open drain to enable development of the land with a car park. Having regard to this imposition and other similar such lease agreements, the valuer has determined that the annual rental value, for an initial period, should be amortised by the Lessee’s cost to construct the suspended concrete slab, to create a level base, to accommodate their development/use of the site. The applicant advised that the cost to construct the suspended concrete slab for the car park will be $1.7M and adopting this figure the valuer has calculated that it would take $35,000pa for the
developers to recover the $1.7M cost over the next 20 years, therefore in his opinion it would be reasonable to adopt an annual rental of $52,000pa less $35,000pa, being $17,000 per annum for the first twenty years and thereafter the annual rent should be adjusted to the full annual market rental valuation, as determined at that time.

The applicant has advised that it is prepared to agree to an annual rental of $17,000pa for the maximum permitted period of 21 years. It is accepted that the applicant would want to of achieve the longest lease term possible to offset its initial outlay.

The proposal was subsequently advertised in accordance with the provisions of the Local Government Act 1995. The advertising process involved the placement of two notices in the local paper (the Echo) circulating in the district on 25 January and 8 February 2013, notices placed on the City’s Web Site, Administration notice board and all City library notice boards, closing 5pm 15 February 2013. No submissions have been received on the proposal.

It is recommended that Council resolve to lease Lot 8006 (Reserve 48924) Farrall Road, Jane Brook to the applicant, Churchlands Nominees Pty Ltd, owners of the adjoining Lot 750, for the purpose of constructing a suspended concrete slab structure above the City’s existing basin for its use as a car park for a term of 21 years at a rent of $17,000 per annum plus GST subject to the applicant:

1. first lodging and obtaining all necessary statutory approvals required for the development and construction of the suspended concrete slab, for the purpose of maintaining and operating a car park, on the City’s Reserve 48924 above its existing drainage basin; and

2. meeting the cost of the City to engage an independent qualified structural engineer, of its choice, to assess the applicant’s structural engineering design plans, submitted by it for the proposed construction of the suspended concrete slab car park, to verify and confirm that it meets all relevant safety and design standards and will be structurally sound and will not compromise or impede the City’s drainage basin and / or its purpose of drainage, or restrict the City’s management of, and ease of access to (vehicles, machinery and plant), the drainage basin beneath the car park for the purpose of maintaining the drainage basin;

Upon the applicant obtaining all necessary statutory approvals for the development and construction of the proposed car park, the lease of Reserve 48924 (Lot 8006) shall be subject to the following terms and conditions:

1. the Lessee agreeing to and meeting the City’s solicitor’s cost in the preparation and finalisation of the lease;

2. the Minister for Lands endorsement to the lease;

3. notice by the Lessee, seeking to renew the lease, must be received no later than six months prior to the expiry of its initial term of 21 years and its renewal will be subject to compliance with statutory requirements and Council approval and the rental value being reviewed at that time and determined at current market rental value without further discount;

4. the Lessee’s proposed car park structure and or its use must not impede or obstruct the City’s drainage basin on the Reserve 48924 to the extent that it shall not affect the drainage or flow of water into the basin and / or the drainage or flow of water from surrounding land into the drainage basin;
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5. the Lessee shall commence works to construct the suspended concrete slab car park structure, and undertake any subsequent works, maintenance or repairs to the structure, in accordance with such approvals and without unreasonable delay and in a clean and tidy manner, ensuring that all such works are undertaken in accordance with required safety standards;

6. the City and its employees, agents and appointed contractors having unrestricted access to its drainage basin on the Reserve 48924 at all times to permit it to inspect, maintain, repair, improve and clean the existing drainage basin beneath the Lessee's car park;

7. the Lessee ensuring the structural integrity of the car park and that the public's safety is maintained at all times and without affect to the City's rights of access and use of the Reserve 48924 for its drainage purposes;

8. the Lessee taking out and maintaining, during the term of the lease and with a reputable insurance office, suitable public liability and risk insurance and indemnifying the Vendor (City of Swan) against all claims, actions, suits, injury or death that may arise from its construction works and use of the Reserve for its purposes;

9. upon determination of the lease, regardless of whether it is terminated due to a breach of the terms of the lease by the Lessee or it has run its time and / or it is not renewed, the Lessee must, at its cost, remove the car park structure from Reserve 48924 (Lot 8006) within six months of the date of termination of the lease, leaving the site clean and tidy and in a similar condition to that prior to entering into the lease; and

10. all other terms and conditions of the lease being determined by City officers in consultation with the City's solicitor(s).

CONSULTATION

The Western Australian Planning Commission's consent to the change of purpose and grant of power to lease of the Reserve 48924 for the additional use of "Car Park" was received by letter of 18 October 2012. The Department of Regional Development & Lands - State Land Services subsequent dealing for the approval to the change of purpose to the City's Management Order and grant of power to lease was lodged at Landgate 29 November 2012. The advertising of the proposed lease commenced 26 January 2013 with publications of notices occurring in a paper circulating in the district over two consecutive weeks and notices being placed on the City's Web site, Administration and all library notice boards with the closing date for submission on or before 15 February 2013.

ATTACHMENTS

Locality plan

STRATEGIC IMPLICATIONS

Nil
STATUTORY IMPLICATIONS

The lease of State land, held under Management Order, by a local government is governed by the provisions of Sections 3.58 of the Local Government Act 1995 and 18 of the Land Administration Act 1997.

FINANCIAL IMPLICATIONS

All costs in the matter are to be borne by the applicant, Churchlands Nominees Pty Ltd, and revenue raised by the rent will be included in City Municipal Revenue.

VOTING REQUIREMENTS

Simple majority

RECOMMENDATION

That the Council resolve:

1) In accordance with the provisions of Sections 3.58 of the Local Government Act 1995 and Land Administration Act 1997, to lease Reserve 48924 (Lot 8006) Farrall Road, Jane Brook to the applicant, Churchlands Nominees Pty Ltd, owners of the adjoining Lot 750, for the purpose of constructing a suspended concrete slab structure above the City's existing drainage basin for its use as a car park for a term of 21 years at a rent of $17,000 per annum plus GST subject to the applicant:

   a) first lodging and obtaining all necessary statutory approvals required for the development and construction of the suspended concrete slab, for the purpose of it maintaining and operating a car park, on the City's Reserve 48924 above its existing drainage basin; and

   b) meeting the cost of the City to engage an independent qualified structural engineer, of its choice, to assess the applicant's structural engineering design plans, submitted by it for the proposed construction of the suspended concrete slab car park, in order to verify and confirm that it meets all relevant safety and design standards and will be structurally sound and will not compromise or impede the City's drainage basin and or its purpose of drainage, or restrict the City's management of, and ease of access to (vehicles, machinery and plant), the drainage basin beneath the car park for the purpose of maintaining the drainage basin;

2) Upon the applicant obtaining all necessary statutory approvals for the development and construction of the proposed car park, the lease of Reserve 48924 (Lot 8006) shall be subject to the following terms and conditions:

   a) the Lessee agreeing to and meeting the City's solicitor's cost in the preparation and finalisation of the lease;

   b) the Minister for Lands endorsement to the lease;
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c) notice by the Lessee, seeking to renew the lease must be received no later than six months prior to the expiry of its initial term of 21 years and shall be subject to compliance with statutory requirements, Council approval and the rental value being reviewed at that time and determined at current market rental value without further discount;

d) the Lessee's proposed car park structure and or its use must not impede or obstruct the City's drainage basin on the Reserve to the extent that it shall not affect the drainage or flow of water into the basin and or the drainage or flow of water from surrounding land into the drainage basin;

e) the Lessee shall commence the works to build and maintain the suspended concrete slab car park structure, and undertake any subsequent works or repairs to the structure, in accordance with approvals and without unreasonable delay and in a clean and tidy manner, ensuring that all such works are undertaken in accordance with required safety standards;

f) the City and its employees, agents and appointed contractors having unrestricted access to its drainage basin on the Reserve 48924 at all times to permit it to inspect, maintain, repair, improve and cleanse the existing drainage basin beneath the Lessee's car park;

g) the Lessee ensuring the structural integrity of the car park and that the public's safety is maintained at all times and without affect to the City's rights of access and use of the Reserve for drainage purposes;

h) the Lessee taking out and maintaining, during the term of the lease and with a reputable insurance office, suitable public liability and risk insurance and indemnifying the Vendor (City of Swan) against all claims, actions, suits, injury or death that may arise from its construction works and use of the Reserve;

i) upon determination of the lease, regardless of whether it is terminated due to a breach of the terms of the lease by the Lessee or it has run its time and / or it is not renewed, the Lessee must, at its cost, remove the car park structure from the Reserve 48924 (Lot 8006) within six months of the date of termination of the lease, leaving the site clean and tidy and in a similar condition to that prior to entering into the lease; and

j) all other terms and conditions of the lease being determined by City officers in consultation with the City's solicitor(s).

CARRIED
LOCALLY PLAN

RESERVE 48924 (LOT 8006) FARRALL ROAD, JANE BROOK