



**City of Busselton**  
*Geographe Bay*

## **Supplementary Items**

## **Council Agenda**

***30 January 2019***

ALL INFORMATION AVAILABLE IN VARIOUS FORMATS ON REQUEST

[city@busselton.wa.gov.au](mailto:city@busselton.wa.gov.au)

CITY OF BUSSELTON

LATE ITEMS FOR THE COUNCIL MEETING TO BE HELD ON 30 JANUARY 2019

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## 15. COMMUNITY AND COMMERCIAL SERVICES REPORT

### 15.1 DUNSBOROUGH FOOTBALL CLUB FUNDING AND SELF SUPPORTING LOAN

<b>SUBJECT INDEX:</b>	Sport & Recreation
<b>STRATEGIC OBJECTIVE:</b>	A community with access to a range of cultural and art, social and recreational facilities and experiences.
<b>BUSINESS UNIT:</b>	Community Services
<b>ACTIVITY UNIT:</b>	Community Services
<b>REPORTING OFFICER:</b>	Manager, Community Services - Maxine Palmer
<b>AUTHORISING OFFICER:</b>	Director, Community and Commercial Services - Naomi Searle
<b>VOTING REQUIREMENT:</b>	Absolute Majority
<b>ATTACHMENTS:</b>	Attachment A DFC Proposal for further funding <a href="#">↓</a> Attachment B Recognition of DFC funding letter <a href="#">↓</a>

#### PRÉCIS

The Dunsborough Football Club Inc. (DFC) has requested the City of Busselton provide a further funding contribution of \$25,000 and a self-supporting loan for \$75,000, for a term of 10 years, to complete the John Edward's Pavilion (JEP) extension including all fixtures and fittings and the bar and kitchen relocation and refit.

#### BACKGROUND

In August 2017, the DFC submitted a proposal to extend the JEP to improve the condition and the amenities of the building and render it suitable for use by the DFC and other local sporting groups. Via a notice of motion issued by the Mayor, Council considered the DFC'S proposal and an associated budget amendment and resolved (in part) as follows:

C1709/226:

*"That the Council:*

- 1. approves a budget amendment for a contribution of \$100,000 from the Infrastructure Development Reserve to co-fund the extension to the John Edwards Pavilion at the Dunsborough Playing Fields (within the 2017/2018 Budget).*
- 2. delegates authority to the CEO to enter into negotiations with the Dunsborough Sharks Football Club for a lease for the John Edwards Pavilion, including provisions that ensure reasonable access for other user groups including but not limited to netball and an orderly transition to future facilities.*
- 3. Delegates authority to the CEO to formalise a Funding Agreement with the Dunsborough Sharks Football Club outlining the necessary terms and conditions to be granted the \$100,000 contribution including the required acquittal process"*

Whilst the resolution above refers to the Dunsborough *Sharks* Football Club, the leading incorporated association is the Dunsborough Football Club Inc. who are a collective of the Dunsborough Sharks (Juniors), the Dunsborough-Yallingup Mulies (Mens), the Dunsborough Ducks (Masters) and the Dunsborough Dragon Slayers (Womens).

City officers worked with representatives of the DFC concerning the terms of the proposed lease, the funding arrangement and the scope of works proposed in relation to the extension and improvement of the JEP. On 31 January 2018, Council resolved (C1801/008):

*That the Council:*

1. *Subject to the consent of the Minister for Lands, authorises the CEO to enter into a lease with the Dunsborough Football Club Inc. for the occupation of the building known as the John Edwards Pavilion which stands on a portion of Lot 4979, Plan 19038, Volume LR3103, Folio 341, Caves Road on Reserve 43008 as shown on Attachment 1 subject to the following:*
  - a) *The annual rent being \$210 inclusive of GST with annual CPI rent review*
  - b) *The term of the lease will be 5 years with a further 5 year option; and*
  - c) *The lease will be consistent with the City' standard community and sporting group lease with the exception of a provision that requires the lessee to obtain the prior approval of the City to their schedule of facility hire charges for the purpose of ensuring the availability of the leased premises for other sporting groups wishing to use the facility.*
2. *Authorises the CEO to enter into formal funding arrangements with the Dunsborough Football Club Inc. detailing the means by which funds are to be secured and administered for the purpose of expansion and improvements to the John Edwards Pavilion.*

On 9 July 2018, the Lease and Funding Agreement were signed by both parties.

On 8 January 2019, the City received a proposal dated 8 December 2018, from the DFC requesting a further funding contribution by the City of \$50,000. The letter is attachment A.

On 16 January 2018, a meeting with the DFC President, City Mayor and Officers took place to discuss the options outlined in the letter. The meeting concluded with the City offering to consider a further \$25,000 in funding and provision of a self-supporting loan to the DFC to fund the remainder of the total works to complete the full extension. The outcomes from this meeting were discussed at the Finance Committee meeting on 17 January and are further summarised in this report.

## **STATUTORY ENVIRONMENT**

Section 6.8 of the Local Government Act refers to expenditure from the municipal fund that is not included in the annual budget. In the context of this report, where no budget allocation exists, expenditure is not to be incurred until such time as it is authorised in advance, by an absolute majority decision of the Council.

## **RELEVANT PLANS AND POLICIES**

Council Policy 048 – Loans is applicable in offering the DFC a Self-supporting Loan.

## **FINANCIAL IMPLICATIONS**

The letter received from the DFC on 8 January 2019, requested a further \$50,000 contribution from the City to the John Edward's Pavilion extension to relocate and fit out the bar and kitchen areas.

After consideration, the proposal is to provide \$25,000 in additional cash funding and support the Club to complete the entire project, including fit out, with a self-supporting loan of up to \$75,000. The Club may not utilise this full amount, however the increased amount will fund the entire works that the DFC would like to undertake, rather than stage the works dependent upon securing finance for each stage.

Council made a general allocation of \$150,000 in the 2018/19 Annual Budget for Self Supporting loans. The fact that the proposed borrowing will be established as a self-supporting loan, with regular payments by the DFC will result in no net effect on the budget position. In addition the loan will not affect Council's ability to borrow as self-supporting loans are not included in the debt ratio calculation.

At the time of writing this report, the DFC had not yet provided a copy of their financial statements to allow Council Officers to establish whether the Club has the ability to service the loan repayments. Based on verbal advice it is assumed the Club is well placed to service the loan repayments over a ten year period, subject to their ability to maintain their operations at current levels and keep pace with inflation. The extension will also provide increased opportunity for the Club to grow income streams through improved kiosk and bar sales and venue hire.

Officers are proposing that the loan be internally funded through the City's New Infrastructure Development Reserve. The additional \$25,000 cash contribution is proposed to be funded from the Budget Surplus Contingency Holding Account. This arrangement would require a Budget amendment as follows:

<i>Cost Code</i>	<i>Description</i>	<b>Current Budget</b>	<b>Change</b>	<b>Proposed Amended Budget</b>
<b>Expenditure</b>				
Self-Supporting Loan Dunsborough Football Club Inc.	Self-supporting Loan Funding	0	75,000	75,000
330-10530-3640-0000	Donations, Contributions and Subsidies - <b>Dunsborough Football Club Inc. \$25,000</b>	237,930	25,000	262,930
100-10001-3680-0000	Budget Surplus Contingency Holding Account	39,798	-25,000	14,798
<b>Equity Transfer</b>				
Transfer from Reserve	New Infrastructure Development Reserve	809,332	-75,000	734,332
<b>Net Total</b>		1,087,060	0	1,087,060

The loan would be granted on the basis of the prevailing Western Australian Treasury Corporation (WATC) lending rate including Government Guarantee Fee at the time of actual Funding of the loan. The WATC have advised that the current borrowing rate for 10 years is 3.13%, noting that this rate is subject to change up until the time of the borrowing.

All interest and principal repayments would be formally agreed to prior to release of any funding.

## **LONG-TERM FINANCIAL PLAN IMPLICATIONS**

The DFC previously requested that recognition be given to the monetary contribution they are making to the improvements to the JEP in the event of their exclusion from the JEP in favour of a non-football related sporting group such as cricket or netball, once new facilities planned for Lot 10 Commonage Road are made available. A copy of the letter documenting the DFC contribution dated 14 March 2018 is in attachment B.

For the sake of clarity there is no suggestion that the financial contribution made by the DFC be taken into consideration should the DFC either disband or choose to vacate the JEP of their own accord during the term of the lease. Further, there will be no requirement for DFC's financial contribution to be offset in the future if none of the other sporting groups are required to make a contribution to the fit out of alternative facilities. Equally, should the DFC effectively be operating out of both the JEP and the new facilities at Lot 10, no element of the contribution made to the JEP will be offset towards fit-out of the new clubhouse.

## **STRATEGIC COMMUNITY OBJECTIVES**

### **Key Goal Area 2:**

Well Planned, Vibrant and Active Places:

### **Our Community Objectives are:**

2.1 A City where the community has access to quality cultural, recreation, leisure facilities and services.

### **Council strategies to support achievement of community objectives -**

- > Enhance our foreshores and reserves to provide a place where people can come together and engage in a range of social and recreational activity, and
- > Ensure our sporting and recreational facilities meet the needs of our growing community.

## **RISK ASSESSMENT**

At the time of writing this report, the DFC had not yet provided a copy of their financial statements to allow Council Officers to establish whether the Club has the ability to service the loan repayments. However, verbal advice indicated they have capacity to meet the repayments on the proposed loan, furthermore their membership and sponsorship is increasing which will further improve their existing sound financial position. Any default on the loan is therefore considered low risk, however if on receipt of the Club's financial statements higher risks are identified, these will be raised with Council.

## **CONSULTATION**

The DFC has consulted with their membership with respect to this proposal.

## **OFFICER COMMENT**

The scope of works upon which the City's previous funding contribution and agreement is based was for a 120m<sup>2</sup> extension to the JEP at a total project cost of \$200,000 with the DFC contributing \$100,000 which included \$40,000 of in kind support and \$60,000 cash.

The letter received from the DFC on 8 January 2019, requested a further \$50,000 contribution from the City to enable the extension to increase by a further 17m<sup>2</sup> by relocating the bar and kitchen. These areas were previously out of the scope of works and were planned to be a later stage. The letter also outlined other unforeseen costs, other unsuccessful funding applications made and a new total project cost of \$300,000.

The revised proposal provides a number of benefits. It minimises impact to the Club's operations and provides cost efficiencies for the build. The kitchen is better located to ease congestion within the building and provide improved ease of service delivery adjacent to the bar area. The new locations of the bar and kitchen free up a larger more flexible social space which will assist with any repurposing of the building in the future.

Whilst there are future plans to build new ovals, clubrooms and associated facilities in Dunsborough Lakes at Lot 10 Commonage Road, the shared clubhouse is some years away. Based on this, and given the current demands associated with the existing playing fields, the future growth of football and other sporting groups and the current condition of the JEP, Council has already supported the proposed expansion to meet the immediate needs of the Dunsborough community. Opportunities also exist to repurpose the facility in line with future planning for the Naturaliste Community Centre (NCC) and the surrounding area.

At 17 January 2019 Finance Committee meeting, the further cash funding of \$25,000 from the City's New Infrastructure Development Reserve and a self-supporting loan of \$75,000 to the DFC was discussed and supported.

The loan would be granted on the basis of the prevailing WATC lending rate including Government Guarantee Fee at the time of actual Funding of the loan. The WATC have advised that the current borrowing rate for 10 years is 3.13%, noting that this rate is subject to change up until the time of the borrowing. The loan would be subject to receipt of a Quantity Surveyor's Report, to confirm the total project cost and work scope, and an assessment of the Club's financial statements, which at the time of writing this report had not yet been received. However, verbal advice about the Club's current and projected financial position indicated that the Club would be well placed to service the loan repayments over a ten year period.

It is also recommended that approval of the funding be subject to a requirement to amend the Lease of the JEP. This Lease should provide that in the event of default in respect of the proposed loan repayments this would be regarded as default under the Lease which could result in termination of the Lease.

City Officers also recommend an amendment to the Funding Agreement that reflects the revised project costs, confirmed with a QS report from the Club, and the additional funding contribution from the City, if agreed. In light of the increased capital expenditure and scope it is also recommended that the acquittal provisions for the cash and in kind contributions be amended to require submission of a spreadsheet in a similar manner to the grant acquittal provisions linked to the Community Sport and Recreation Facilities Fund.

The DFC would like to commence works on 14 February and conclude the expansion and improvement works in time for the commencement of the 2019 season in April. Whilst City officers will do everything within their control to support this, these timeframes are subject to the DFC obtaining a Building Permit and the execution of an amended Lease and Funding Agreement.

## **CONCLUSION**

Further funding of \$25,000 to the DFC from the City's New Infrastructure Development Reserve will bring the City's cash contribution to the JEP extension to \$125,000. Further support from the City by way of a self-supporting loan of \$75,000 will enable the whole project to be completed without the need for further fundraising and staging. This achieves economies, reduces impact, supports improved service delivery and provides a more flexible, convertible space for the future. Furthermore, the costs associated with the internal funding of the loan are offset by the income to be received from the DFC as per a Loan Repayment Agreement. Officers recommend that the request be approved.

**OPTIONS**

Should Council not approve the request from DFC, they may consider the following options:

1. Proceed in line with the original scope of works and executed Lease and Funding Agreement
2. Provision of a self-supporting loan only for the total amount requested, i.e. no City cash contribution or
3. Other funding or loan options

**TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

Should the request be approved, action will be taken immediately to implement the recommendations of the Council.

**OFFICER RECOMMENDATION**

That the Council:

1. Subject to the assessment of the Club's Financial Statements and the submission of a Quantity Surveyor's report, confirming the total project cost, approve for the purposes of extending the building known as the John Edwards Pavilion, which stands on a portion of Lot 4979, Plan 19038, Volume LR3103, Folio 341, Caves Road on Reserve 43008 as shown in Attachment 1:
  - a) an additional \$25,000 cash contribution funded from the Budget Surplus Contingency Holding Account and,
  - b) a self-supporting loan, to be internally funded, to the Dunsborough Football Club Inc., for the amount of \$75,000 for a term of up to ten (10) years.
2. Advise the Dunsborough Football Club Inc. that it must obtain all relevant development and building approvals from the City prior to any loan funds being disbursed,
3. Authorises the CEO to enter into a Loan Repayment Agreement with the Dunsborough Football Club Inc. where,
  - i. The club acknowledges it is responsible for reimbursement to the City of Busselton of full costs associated with the loan,
  - ii. The Loan repayment calculations are on the basis of the prevailing Western Australian Treasury Corporation lending rate including Government Guarantee Fee at the time of actual funding of the loan.
4. Authorises the CEO to enter into an amended Lease providing that default in respect of the Loan Repayment Agreement could result in termination of the Lease.
5. Authorises the CEO to enter into an amended Funding Agreement reflecting the increase in the contribution made available to the Dunsborough Football Club and the inclusion of additional acquittal provisions in relation to the in kind and cash contributions.
6. Amends the 2018/2019 Municipal Budget as follows to recognise the relevant income, expenditure and any associated loan movements; noting that there will be no net impact on Councils projected Surplus position:

<i>Cost Code</i>	<i>Description</i>	<b>Current Budget</b>	<b>Change</b>	<b>Proposed Amended Budget</b>
<b>Expenditure</b>				
Self-Supporting Loan Dunsborough Football Club Inc.	Self-supporting Loan Funding	0	75,000	75,000
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<b>Equity Transfer</b>				
Transfer from Reserve	New Infrastructure Development Reserve	809,332	-75,000	734,332
<b>Net Total</b>		<b>1,087,060</b>	<b>0</b>	<b>1,087,060</b>

8<sup>th</sup> December 2018

Grant Henley  
Mayor  
City of Busselton  
BUSSELTON WA 6280

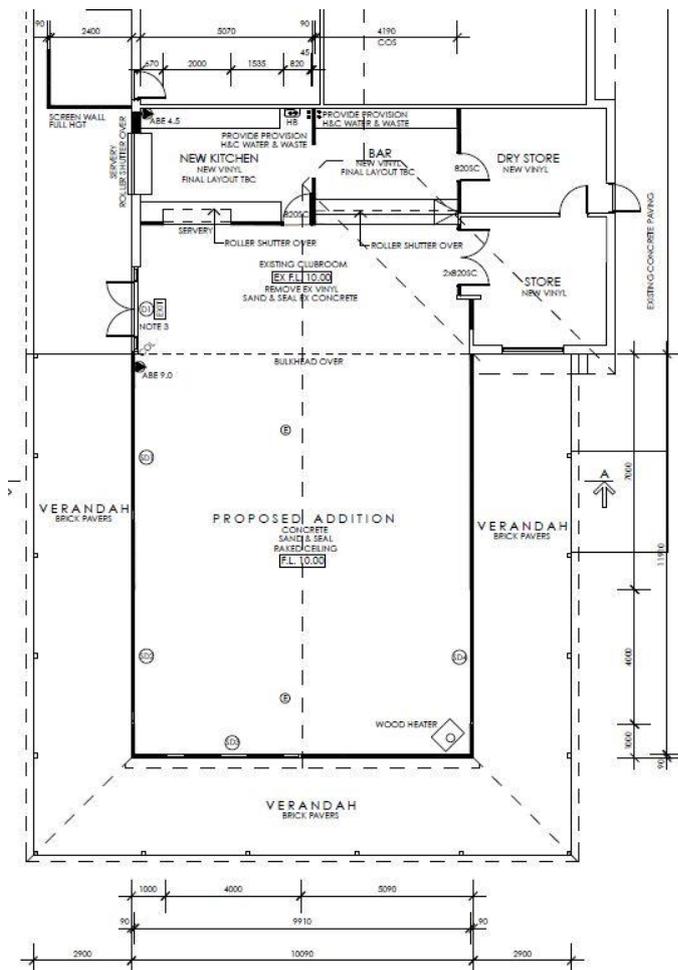
Dear Grant

**RE: EXTENSION TO THE CO FUNDING APPLICATION WITH THE DUNSBOROUGH FOOTBALL CLUB INC. (DFC)**

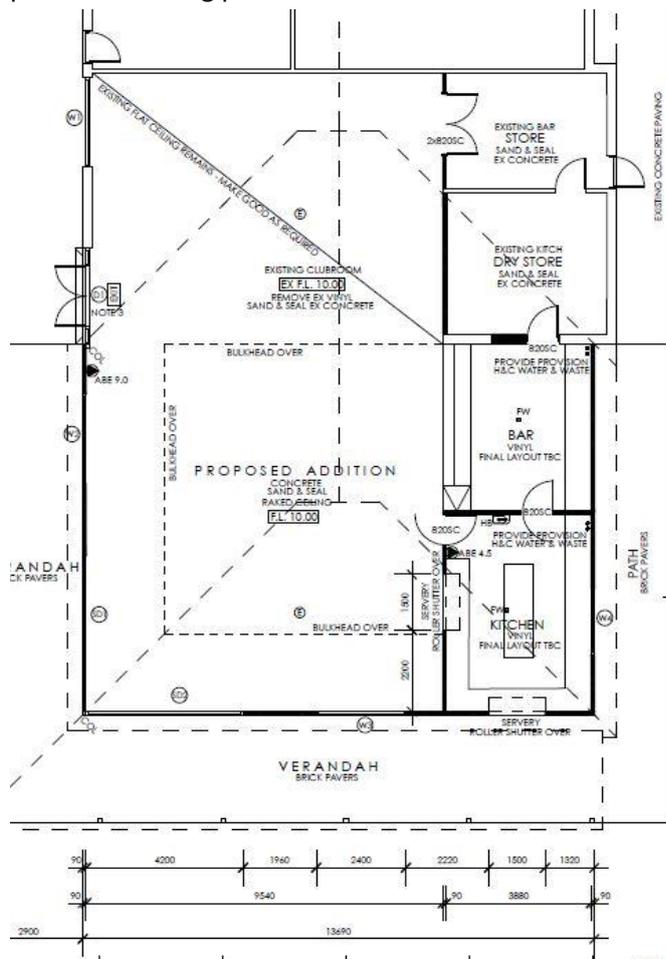
Firstly we appreciate your support so far in this worthy project.

The first set of plans we did and showed you was a 120 square metre extension. This was fully costed at a \$250k build. It is important to note we were always going to retro fit the kitchen once further funds allowed.

The DFC has \$125k in the bank, CoB contributing \$100k and donations of \$50k saw this green light go. See below.



The JEP extension working committee believed the layout would be more efficient and ergonomic as per the following plans.



This revised plan is an increase of 137 square metres and has been fully costed at \$300k. There are a bunch of reasons why the costs went up. This is mainly due to the increase in size and also now with some further confirmed specification:

- I. Extra earthworks
- II. Extra reinforcing and concrete
- III. Extra honing to concrete
- IV. Structural steelwork now required
- V. Supply and install 500 litre grease trap
- VI. Extra lighting and data points
- VII. Acoustic and recessed ceiling
- VIII. Allowance to paint the existing roof
- IX. Door hardware to COB specifications
- X. Tiled floor, walls and skirting now allowed in lieu of vinyl flooring

In a nutshell, unless we achieved an increase in the support from the CoB funding, we will proceed with the first option or not proceed until further funds are raised.

## **GRANTS**

We have applied for grants, namely the Department of Sport and Recreation, West Australian Football Commission and Holden. These applications were unsuccessful as the nature of the development was specifically an increase in a social space.

We also applied under the community grants process for the CoB to do the earthworks, which was unsuccessful.

Further improvements of the JEP would focus on adding a female changeroom, which we have been advised would see favourable AFL and DSR funding applications.

## **TIMELINE**

The builder has provide this rough schedule for the New Year if we get approvals before-hand:

Week 14/02/19 – Demolition

Week 21/02/19 – Earthworks

Week 28/02/19 – Plumbing pre-lay and Slab

Week 11/03/19 – Carpentry

Week 26/03/19 – Roof Plumbing

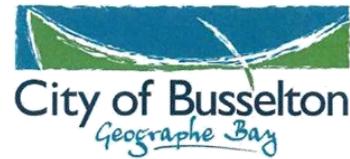
Thank you for your consideration on this important matter.

Yours sincerely,

**Redmond Sweeny**

President – Dunsborough Sharks FC.

Our Ref: JOHN EDWARD PAVILION  
Your Ref:  
Contact: Sharon Woodford-Jones  
[Sharon.woodford-jones@busselton.wa.gov.au](mailto:Sharon.woodford-jones@busselton.wa.gov.au)  
9781 0310



14 March 2018

Mr R Sweeney  
Dunsborough Football Club Inc  
PO BOX 918  
DUNSBOROUGH WA6281

Dear Redmond

**DUNSBOROUGH FOOTBALL CLUB CONTRIBUTION TOWARDS EXTENSION WORKS AT THE JOHN EDWARD PAVILION**

We write to document the circumstances under which the financial commitment proposed to be made by the Dunsborough Football Club Inc (the Club) to co-fund the extension works to the building known as the John Edward Pavilion (the JEP) at the Dunsborough Playing Fields will be taken into consideration in the future.

Following a resolution of Council to make available from the Infrastructure Development Reserve in the 2017/2018 budget a sum of \$100,000 towards the proposed extension works at the John Edward Pavilion, the Club have agreed to contribute a cash component of \$60,000 (final sum to be confirmed) towards the project.

Council further resolved on 31 January 2018 to grant a lease of the JEP and immediately surrounding land required for the purpose of the extension to the Club. Council also resolved to enter into a funding agreement in relation to the City's contribution to the works.

The City are in the process of drawing up concept plans and proposals for new sporting facilities at Lot 10 Commonage Road, Dunsborough (Lot 10 facilities) which may or may not include clubhouse and changing room facilities for football that render the use of the JEP redundant for that purpose. The final format and timing for delivery of the Lot 10 facilities is yet to be agreed.

This letter sets out the circumstances under which the cash contribution in the sum of \$60,000 once made by the Club, might be offset against any monetary contribution the City may require from the Club in connection with fit out at the Lot 10 facilities.

The City acknowledge that once the Lot 10 facilities are made available, should the Club be required to vacate the JEP in favour of a non-football related sport such as cricket or netball, the Club's financial contribution towards expansion of the JEP in the sum of \$60,000 (TBC) will be offset against any financial contributions that may be required from the Club for fit out of the Lot 10 facilities relative to the sport of football.

All Communications to:

The Chief Executive Officer  
Locked Bag 1  
BUSSELTON WA 6280  
T: (08) 9781 0444 E: [city@busselton.wa.gov.au](mailto:city@busselton.wa.gov.au)  
[www.busselton.wa.gov.au](http://www.busselton.wa.gov.au)

*Events Capital WA*

It is acknowledged that there will be no requirement for the Club's financial contribution to be offset or recognised in any way if there is no requirement for the Club to make a contribution to the fit out of the Lot 10 facilities. Further, in the event that the Club operate out of both the JEP **and** the Lot 10 facilities, no element of the contribution made by the Club to the JEP will be offset towards fitout of the new Lot 10 facilities.

In addition, for the sake of clarity, the financial contribution made by the Club will not be taken into consideration should the Club either disband or choose to vacate the JEP of their own accord during the term of their proposed lease or in the event of a breach of their obligations under either the lease or the proposed funding agreement.

Yours sincerely



MIKE ARCHER  
CHIEF EXECUTIVE OFFICER

All Communications to:

The Chief Executive Officer  
Locked Bag 1  
BUSSELTON WA 6280  
T: (08) 9781 0444 E: [city@busselton.wa.gov.au](mailto:city@busselton.wa.gov.au)  
[www.busselton.wa.gov.au](http://www.busselton.wa.gov.au)

*Events Capital WA*

## 16. FINANCE AND CORPORATE SERVICES REPORT

### 16.2 PROPOSED DEVELOPMENT OF A FAMILY RESTAURANT/MICROBREWERY/FUNCTION

#### SUBJECT INDEX:

<b>STRATEGIC OBJECTIVE:</b>	An innovative and diversified economy that provides a variety of business and employment opportunities as well as consumer choice.
<b>BUSINESS UNIT:</b>	Corporate Services
<b>ACTIVITY UNIT:</b>	
<b>REPORTING OFFICER:</b>	Legal Services Coordinator - Cobus Botha
<b>AUTHORISING OFFICER:</b>	Director, Community and Commercial Services - Naomi Searle
<b>VOTING REQUIREMENT:</b>	Simple Majority
<b>ATTACHMENTS:</b>	Nil

#### PRÉCIS

This report seeks Council's consideration to extend the deadline of 31 January 2019 for Geographe Bay Brewing Company Pty Ltd (**Proponent**) to satisfy or waive the outstanding conditions under an Agreement to Sublease (**Development Agreement**) entered into between the City and the Proponent in relation to the proposed development of a family restaurant/microbrewery/function centre on the Busselton foreshore (**Proposed Development**).

#### BACKGROUND

The Development Agreement provides, among other things, for the Proponent to obtain a loan from a reputable financial institution to undertake the Proposed Development. At a number of occasions in the past the Proponent has requested (and the City has granted) extension of time to satisfy this condition. On 14 November 2018 Council resolved as follows:

*That the Council resolves to:*

1. *Set 31 January 2019 as the deadline for the Geographe Brewing Company Pty Ltd (Proponent) to satisfy (or waive) all Conditions Precedent under the Agreement to Sublease between the City and the Proponent and to formally enter unconditionally into the sublease with the City.*
2. *Should the Proponent meet the deadline in resolution (1), negotiate and agree with the Proponent an extended date for commencement of the sublease and other corresponding milestones in the sublease.*
3. *Should the Proponent fail to meet the deadline in resolution (1):*
  - a) *The Proponent's 'preferred proponent' status for this project be discontinued by the City;*
  - b) *The City commences an expression of interest process seeking commercial interest for a family restaurant/microbrewery development on a portion of Lot 561 on the Busselton foreshore (in accordance with the Busselton Foreshore Master Plan); and*
  - c) *The Proponent not be disqualified from participating in or submitting an expression of interest under the process mentioned in resolution 3 (b).*
4. *Authorise the Chief Executive Officer to take such action as is required or appropriate for implementing resolutions (1), (2) and/or (3), including but not limited to:*
  - a) *Varying or discharging the Agreement to Sublease in accordance with resolutions (1) and (2);*

- b) *Commencing the expression of interest process in accordance with resolution 3(b); and*
- c) *Signing on behalf of the City such documents as necessary for the purposes of resolution (4).*

On 22 January 2019 the Proponent advised the City that they:

- Are committed to progress in good faith completion of construction of the Proposed Development as soon as it's practically achievable;
- Have reached in principle agreement with a local family group/developer (**Prospective Equity Partner**) who are interested in becoming an equity partner in and co-fund the Proposed Development; and
- Request an extension of time of above-mentioned 31 January 2019 deadline to formalise their agreement with the Prospective Equity Partner.

Representatives of the Prospective Equity Partner have since met with City officers and:

- Advised of their interest in becoming an equity partner in and co-fund the Proposed Development;
- Indicated that, subject to them being able to formalise their arrangement with the Proponent within the next few months, the Proposed Development could be completed by spring of 2020; and
- Requested an extension of above-mentioned 31 January 2019 deadline by 60 days.

This report seeks Council's consideration to extend the deadline of 31 January 2019 as proposed by the Proponent and the Prospective Equity Partner.

## **STATUTORY ENVIRONMENT**

Section 3.58 of the *Local Government Act 1995 (Act)* requires that before agreeing to dispose of property, the local government is required to give local public notice of the proposed disposition and invite and consider submissions received prior to proceeding with the proposed disposal. The City duly complied with Section 3.58 of the Act.

The Proponent and the Prospective Equity Partner indicated that:

- The parties do not intend to change the legal structure of the Proponent (that is Geographe Bay Brewing Company Pty Ltd will continue to be the contracting party and sublessee); and
- The Prospective Equity Partner does not intend to acquire more than a 50% beneficial interest in the Proposed Development.

The Development Agreement does allow the Proponent to dispose of up to 50 % of its shares without the City's consent. Therefore the proposed engagement of the Prospective Equity Partner by the Proponent is considered to be consistent with the Development Agreement.

In terms of Section 9.49B of the Act a person acting under the authority of a local government may make, vary or discharge a contract in the name of or on behalf of the local government in the same manner as if that contract was made, varied or discharged by a natural person. In terms of the 14 November 2018 Council resolution Council authorised the Chief Executive Officer to undertake certain contract formalities in relation to the extended deadline on behalf of the City and, as part of the Officer Recommendation in this report, it is recommended that Council extend this authorisation.

## **RELEVANT PLANS AND POLICIES**

All actions to date have been consistent with the contents of the Busselton Foreshore Master Plan where activation of the Busselton foreshore is identified as a key priority.

## **FINANCIAL IMPLICATIONS**

There are no immediate direct financial implications arising as a result of the Officer Recommendation of this report.

The City entered into a head lease with the State of Western Australia in respect to the land where the Proposed Development will be located (**Lease Area**). The rent under the head lease is nominal (\$1,000 + GST per year). The head lease is considered an asset to the City as it secures tenancy of the Lease Area in a prominent location.

The head lease allows the City to grant a sublease of the Lease Area to the Proponent. Lease revenue from the sublease will, when received, be directed to the Jetty Maintenance Reserve in accordance with the terms of the head lease. This will result in a reduced reliance on municipal revenue to fund the City's commitment to jetty maintenance.

## **LONG-TERM FINANCIAL PLAN IMPLICATIONS**

The Long Term Financial Plan will recognise an appropriate income stream from the Lease Area when the sublease has been entered into.

## **STRATEGIC COMMUNITY OBJECTIVES**

The Proposed Development and the Officer Recommendation in this report aligns with:

- Key Goal Area 2 of the City's Corporate Business Plan 2018- 2022 – Places & Spaces (and specifically community objective 2.2: Attractive parks and open spaces that create opportunities for people to come together, socialise and enjoy a range of activities).
- Key Goal Area 6 of the City's Corporate Business Plan 2018- 2022 – Leadership (and specifically community objective 6.4 – Assets are well maintained and responsibly managed); and
- Council's strategy – 'Continue to develop the foreshore reserves as family friendly places'.

## **RISK ASSESSMENT**

Should Council adopt the Officer Recommendation, there are no residual risks rated as medium or high in relation to the Proponent or the Proposed Development.

## **CONSULTATION**

Extensive community consultation occurred when Council developed the Busselton Foreshore Master Plan. Public submissions were invited and considered by Council prior to resolving on 23 July 2014 to proceed with the Proposed Development.

The City has on an ongoing basis liaised with representatives from Department of Planning, Lands and Heritage with regard to excision of the Lease Area from the existing foreshore reserve and the subsequent head lease and sub leasing arrangements.

**OFFICER COMMENT**

Since the 14 November 2018 Council resolution (establishing the 31 January 2019 deadline) the Proponent obtained revised planning approval for the redesigned building. That left funding for the Proposed Development and obtaining a building permit by the Proponent as the only two outstanding conditions under the Development Agreement. Obtaining a building permit is not considered to be a material issue as the Proponent indicated they may be prepared accept the risk in relation to obtaining a building permit and as such agree to waive this as a condition precedent.

Both the Proponent and the Prospective Equity Partner indicated that significant up-front capital required for delivering the Proposed Project is a major issue. This, together with other considerations as outlined in the 14 November 2018 Council report, is having an adverse impact on the Proponent's ability to obtain finance for the Proposed Development. Future proponents are likely to experience similar difficulties should the Development Agreement be terminated and the City proceed with a new expression of interest process.

City officers are satisfied that the Prospective Equity Partner's interest is bona fide and sincere. The Prospective Equity Partner also indicated that, subject to final agreement being reached with the Proponent, they are willing and able to meet the Proponent's funding requirements for the Proposed Development.

The Prospective Equity Partner indicated that they require a period of 60 days (that is until 31 March 2019) to allow them to undertake their due diligence and reach final agreement with the Proponent as to their involvement in the Proposed Development. Final agreement between the Proponent and the Prospective Equity Partner will allow the Proponent to:

- Satisfy or waive the outstanding conditions under the Development Agreement;
- Enter unconditionally into the proposed sublease;
- Proceed without further delay with construction of the buildings; and
- Be in a position to open their doors for business by the spring of 2020.

Given the circumstances City officers consider reasonable extension of the 31 January 2019 to be in the City's best interest. Significant time and resources have been expended by the City in negotiating and approving the current building design, securing tenancy of Crown land for the Lease Area and negotiating and finalising the terms and conditions of the sublease (between the City and the Proponent). Should the Development Agreement be terminated and a new expression of interest process be commenced, all of the above will have to be renegotiated with a new proponent which could delay delivery of the Proposed Development by 12 – 18 months (that is until 2021/22).

Although the request is for 60 days extension of the 31 January 2019 deadline, at officer level the view is that an extension until 28 February 2019:

- Should provide the Proponent and the Prospective Equity Partner with adequate time to finalise their negotiations; and
- Given the history of this project, is fair and reasonable.

Therefore the Officer Recommendation recommends extension of the 31 January 2019 deadline until 28 February 2019 and termination of the Development Agreement should all outstanding conditions not be satisfied by that date. The Officer Recommendation will also allow the City to proceed with a new expression of interest process without further delay should the Development Agreement terminate on 28 February 2019 (or such other date as determined by Council).

## **CONCLUSION**

By allowing the requested extension of time Council may, in the short term, risk delaying a new expression of interest process by a month or two (that is if the Proponent fails to satisfy all outstanding conditions by 28 February 2019 or such other date as determined by Council). However, should the Proponent succeed, such an extension could result in the Proposed Development being completed by the spring of 2020, estimated to be 12 – 18 months earlier as the case would be under a new expression of interest process.

## **OPTIONS**

The Council has the following options as alternative to the OFFICER RECOMMENDATION:

### Option 1

Resolve to extend the 31 January 2019 deadline (as determined under the 14 November 2019 Council resolution) by more or less than the 28 February 2019 deadline recommended at officer level; or

### Option 2

Resolve for the status quo to remain, which means that, should the Proponent fail to meet the 31 January 2019 deadline, the Development Agreement will be terminated and a new expression interest process will commence.

## **TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

If the Officer Recommendation is adopted:

- The City and the Proponent will need to enter into an amended Development Agreement by no later than 31 January 2019 to formalise the extended deadline; and
- Depending on whether the Proponent satisfies or waives all outstanding conditions by the extended deadline, the City will either finalise and enter into the sublease with the Proponent or terminate the Development Agreement and commence a new expression of interest process during or about April 2019.

## **OFFICER RECOMMENDATION**

That the Council resolves:

1. To extend to 28 February 2019 the 31 January 2019 deadline, set under Council resolution C1811/231, as the deadline for the Geographe Brewing Company Pty Ltd (Proponent) to satisfy (or waive) all Conditions Precedent under the Agreement to Sublease between the City and the Proponent.
2. That resolutions (2) – (4) under the 14 November 2019 Council resolution (C1811/231) apply mutatis mutandis (that is with the necessary changes as required by the context) to resolution (1) above.