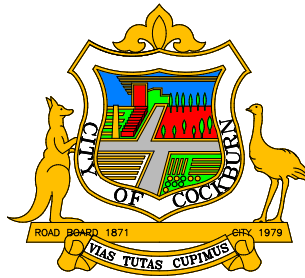


CITY OF COCKBURN



SPECIAL COUNCIL MEETING

AGENDA PAPER

FOR

THURSDAY, 16 JULY 2015

CITY OF COCKBURN

SUMMARY OF AGENDA TO BE PRESENTED TO THE SPECIAL COUNCIL MEETING TO BE HELD ON THURSDAY, 16 JULY 2015 AT 6:30 PM

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CITY OF COCKBURN**AGENDA TO BE PRESENTED TO THE SPECIAL COUNCIL
MEETING TO BE HELD ON
THURSDAY, 16 JULY 2015 AT 6:30 PM**

1. DECLARATION OF MEETING**2. APPOINTMENT OF PRESIDING MEMBER (If required)****3. DISCLAIMER (To be read aloud by Presiding Member)**

Members of the public, who attend Council Meetings, should not act immediately on anything they hear at the Meetings, without first seeking clarification of Council's position. Persons are advised to wait for written advice from the Council prior to taking action on any matter that they may have before Council.

4. ACKNOWLEDGEMENT OF RECEIPT OF WRITTEN DECLARATIONS OF FINANCIAL INTERESTS AND CONFLICT OF INTEREST (by Presiding Member)

Nil

5. APOLOGIES & LEAVE OF ABSENCE

Nil

6. PUBLIC QUESTION TIME

Nil

7. DECLARATION BY COUNCILLORS WHO HAVE NOT GIVEN DUE CONSIDERATION TO MATTERS CONTAINED IN THE BUSINESS

Nil

8 (SCM 16/07/2015) - 8 PURPOSE OF MEETING

The purpose of the meeting is to consider adoption of the legal framework for

the contract between the City of Cockburn and the Fremantle Football Club for the Regional Physical Activity and Education Centre RPAEC.

9. COUNCIL MATTERS

9.1 (SCM 16/07/2015) - REGIONAL PHYSICAL ACTIVITY AND EDUCATION CENTRE (154/006) (R AVARD) (ATTACH)

RECOMMENDATION

That Council approve the following:

- (1) the sublease between the City of Cockburn and Fremantle Football Club (Inc.) related to the area of land upon which will be constructed the Fremantle Football Club administration and team exclusive use areas, as shown in Attachment 1 to the agenda.;
- (2) the sublease between the City of Cockburn and the Fremantle Football Club (Inc.) related to the area of land upon which will be constructed the AFL Oval, as shown in Attachment 2 to the agenda;
- (3) the Development Agreement for the Regional Physical Activity and Education Centre (RPAEC) between the City of Cockburn and the Fremantle Football Club (Inc.), as shown in Attachment 3 to the agenda;
- (4) the Facility Lease between the City of Cockburn and the Fremantle Football Club (Inc.) for a portion of the Regional Physical Activity and Education Centre (RPAEC), as shown in Attachment 4 to the agenda;
- (5) the Oval Lease between the City of Cockburn and the Fremantle Football Club (Inc.), as shown in Attachment 5 to the agenda;
- (6) the Management and Operations Agreement between the City of Cockburn and the Fremantle Football Club (Inc.), as shown in Attachment 6 to the agenda; and
- (7) the Chief Executive Officer negotiates any required minor amendments to the abovementioned documents considered not to be of material importance to the intent of the Council.

COUNCIL DECISION



Background

Council, at its Special Meeting of 25 June 2015, resolved to accept the Guaranteed Maximum Price Tender from Brookfield Multiplex Constructions Pty Ltd (BM), subject to Council acceptance of the following agreements between the City of Cockburn and the Fremantle Football Club (FFC):

1. Development Agreement
2. Oval Lease
3. Facility Lease
4. Management and Operations Agreement.

The City of Cockburn's Solicitors in this matter, Jackson McDonald, have prepared the legal documents described above and been closely involved in the negotiations of the various Terms and Conditions for the agreements with the FFC and their Solicitors, DLA Piper. A representative of Jackson McDonald will be in attendance at the meeting to respond to any issues which may require clarification.

The City of Cockburn and LandCorp have signed a lease for the RPAEC site.

Subsequent to the Council decision of 25 June 2015, the FFC approached the City of Cockburn seeking to enter sub-leases for the land that will accommodate the future oval and another sub-lease that will accommodate the administration and team exclusive use facilities. This will allow the FFC to pay their sub-contractor, Programmed Construction, directly for the oval and bore works and Brookfield Multiplex for their portion of the building works.

Submission

N/A

Report

Sub Lease - FFC Administration Facility

The FFC will enter a sub-lease with the City for the area of land upon which will sit the exclusive FFC building. The FFC will then, in

accordance with the Development Agreement, be required to pay the Building Contractor, Brookfield Multiplex, directly for the works carried out on their area. While the City of Cockburn will remain the Principal for the building contract with Brookfield Multiplex, the City will enter a Tripartite Deed of Arrangement to ensure FFC are held responsible for payments due to Brookfield Multiplex.

Sub Lease - Oval Area

It is in the interest of all parties for the FFC to be able to construct the AFL Oval on the land that it will control under a sub-lease with the City of Cockburn. FFC have directly contracted Programmed Construction to install the bore for the oval and to carry out all the requisite reticulation and grassing of the oval area. This is clearly the responsibility of FFC under the Facility Development Agreement. This sub-lease will fall away when the land becomes a Crown Reserve and is transferred to the City under a Management Order. The Oval Lease arrangement will then come into effect, as shown in attachment 5.

Development Agreement

The City of Cockburn is the Principal in the building contract with BM and will have overall and final responsibility for constructing the RPAEC. The Development Agreement essentially clarifies what the City will be constructing for itself and what the FFC will have constructed. The agreement covers the following significant matters:

- Acknowledgement that the City will contractually appoint the project builder and that the FFC acknowledge this and also agrees to the design and specification for the shared areas. There has been a considerable amount of negotiation on the allocation of project risks. A balance has been achieved given that the City is the Principal in the building contract, yet acknowledging that the project is a shared endeavour with funds also being contributed from Commonwealth and State sources.
- Project cost share arrangements. The total cost of the building works is divided on the basis of 23% to the FFC and 77% to the City of Cockburn. This is based on the costing prepared by the independent quantity surveyor and confirmed by the project builder. If either party chooses to have additional works that changes the scope of the works for their area, they will be responsible for the total cost of these works. If there is an additional cost to a common area (e.g. the entry street) this cost will be shared on a 23% / 77% basis. On the completion of building works, a review of cost allocation will be carried out to confirm the proportionate split, or adjust the amounts payable by each party accordingly.

- A tripartite Deed of Payment will be established which provides for FFC to pay BM directly.
- The FFC will be responsible for the construction of the main AFL oval and the associated bore. The cost of these works is included in the proportionate project cost split.
- Should there be any building defects in the FFC area the City will pursue the builder to the full extent of the contract, provided that the building defects claim is reasonable and can be independently verified.
- Process should the Builder default due to insolvency. This is very unlikely but nevertheless is contemplated in the Agreement.

Facility Lease

This document comes into effect when the building works have been completed and the land is transferred to the City of Cockburn as a Reserve under a Management Order. This Lease will incorporate the following significant issues:

- FFC needs to synchronise access to the building and the oval as they cannot have one without the other. The commencement of the lease of the facility takes effect when the building is completed and the oval is ready for use by FFC.
- The lease period is for 21 years with FFC having an option to extend for a further term of 21 years.
- FFC is responsible for all costs associated with the operation and maintenance of its areas and there will be a cost share arrangement for outgoings in the shared areas, such as the entry street and elevators.
- Responsibilities for the maintenance and replacement of the FFC areas and the shared areas are clarified. An Asset Management plan for the life of the facility will be prepared which will detail anticipated capital expenditure for major maintenance items.
- The FFC will pay the City \$60,000 (plus CPI) for naming rights for the precinct, which includes the overall building and the oval area. The City will name its facility as it sees fit.

Oval Lease

This document comes into effect when the building works have been completed and the land is transferred to the City of Cockburn as a Reserve under a Management Order.

The Lease covers the following significant issues:

- FFC are responsible for the ongoing maintenance of the oval, including the reticulation system, bore and grass maintenance.
- FFC are responsible for insurances associated with the use of the oval by its players and personnel and the public in general.
- FFC will have exclusive use of the oval for training purposes but due to the vesting of the land, the public will be able to utilise the area on a casual basis. The City will utilise the nearby community fields for community club's official games.
- The City has use of the oval at no charge for community events provided that it does so at times mutually agreed with FFC, in consideration of FFC training requirements and the condition of the oval surface.

Management and Operations Agreement

The Management and Operations Agreement (MOA) details the access arrangements for the City and FFC to the shared facilities of the RPAEC that fall under the management of either the City or FFC. This document comes into effect once both the City of Cockburn and Fremantle Football Club shared facilities are completed and commissioned for use. The agreement has been developed in line with the principles agreed within the Heads of Agreement signed by both parties in December 2012.

The following facilities are identified as shared, under the management of the City of Cockburn, with access granted to FFC in consideration of the specific requirements of the FFC:

- 6 x indoor court stadiums
- 25m Indoor Pool
- 50m Outdoor pool
- Hydrotherapy Pool
- Recovery Pools
- Community Playing Fields

Fremantle Football Club, in exchange for access to the above facilities specified in the conditions of the agreement, will pay the City an agreed hire fee (amount to be negotiated) annually, increased by CPI for the length of the lease.

The following areas are identified as shared, under the management of the Fremantle Football Club, with access granted to the City of Cockburn in consideration of the specific requirements of the City of Cockburn or on behalf of the community:

- Function Rooms
- Meeting Rooms
- Altitude Training Room
- Lecture Theatre
- Multimedia Centre

The City will be granted free access to the function room and meeting rooms in accordance with the MOA conditions. The FFC also agree to charge community rates for these areas, so local groups can access these facilities at a discounted rate.

The Agreement allows for flexibility for the City and FFC to negotiate the access times to the shared facilities. FFC are required to provide a full training schedule shortly after the announcement of the AFL season fixtures. This allows the Centre management to ensure that facilities, when not being used by the FFC, are made available to the City for programs or general public usage.

At its meeting of 12 February 2015, Council resolved to adopt the Business Plan for the Regional Physical Activity and Education Centre, which contemplated the development as set out in the Agreements described above.

Strategic Plan/Policy Implications

Infrastructure

- Community facilities that meet the diverse needs of the community now and into the future.
- Community infrastructure that is well planned, managed, safe, functional, sustainable and aesthetically pleasing.
- Partnerships that help provide community infrastructure.
- Facilities that promote the identity of Cockburn and its communities.

Community & Lifestyle

- People of all ages and abilities to have equal access to our facilities and services in our communities.
- Promotion of active and healthy communities.

Leading & Listening

- Manage our financial and infrastructure assets to provide a sustainable future.
- A culture of risk management and compliance with relevant legislation, policy and guidelines.

A Prosperous City

- Sustainable development that ensures Cockburn Central becomes a Strategic Regional Centre.
- Investment in the local economy to achieve a broad base of services and activities.
- Promotion and support for the growth and sustainability of local businesses and local business centres.
- A range of leading educational facilities and opportunities.
- Creation and promotion of opportunities for destination based leisure and tourism facilities.

Budget/Financial Implications

CAPITAL - Council's decision on these Agreements will result in a significant financial commitment by Council to this project. Council's 2015/16 budget includes \$50m for the capital cost of the project, which includes a \$25m Loan facility, with the balance funded from a combination of Municipal and Reserve Funds. The remaining capital costs will be funded in the 2016/17 financial year.

OPERATIONAL – Annual income to the City of Cockburn from FFC will be as follows:

1. Naming Rights - \$60,000 per annum (increased by CPI).
2. Usage Fee – estimated \$45,000 per annum (to be negotiated).
3. Merchandise Sales – estimated \$25,000 per annum.

Legal Implications

Sec 3.58 of the Local Government Act 1995 refers.

The Agreements have been prepared by law firms representing both parties and both parties will be legally bound by the content of the documents, where relevant.

Community Consultation

N/A

Attachment(s)

1. Sub Lease – FFC Exclusive Use Areas
2. Sub Lease – AFL Oval
3. Development Agreement
4. RPAEC Facility Lease
5. AFL Oval Lease
6. Management and Operations Agreement

Advice to Proponent(s)/Submissioners

FFC has been advised that this matter is to be considered at the Special Council Meeting to be held on 16 July 2015.

Implications of Section 3.18(3) Local Government Act, 1995

Nil

10. RESOLUTION OF COMPLIANCE (Section 3.18(3), Local Government Act 1995)**10.1. (SCM 16/07/2015) - RESOLUTION OF COMPLIANCE (SECTION 3.18(3), LOCAL GOVERNMENT ACT 1995)****RECOMMENDATION**

That Council is satisfied that resolutions carried at this Meeting and applicable to items concerning Council provided services and facilities, are:-

- (1) integrated and co-ordinated, so far as practicable, with any provided by the Commonwealth, the State or any public body;
- (2) not duplicated, to an extent Council considers inappropriate, services or facilities as provided by the Commonwealth, the State or any other body or person, whether public or private; and
- (3) managed efficiently and effectively.

COUNCIL DECISION**11. CLOSURE OF MEETING**

Nil