

**Meeting:** Council  
**Title:** INEA YMCA Status Report, May 2016  
**Responsible Manager:** Chief Executive Officer, Kiki Magro  
**Author:** General Manager, Heather Barclay  
**Type of Report:** **Decision Required**

Item No: 17.1.2
File No: 16.51.2.1
Date: 16 May 2016
Attachment: Nil

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Pursuant to Section 83(5) of the Local Government Act 1999, the Chief Executive Officer indicates that the matter contained in this report may, if the Council so determines, be considered in confidence pursuant to Section 90(2) of the Local Government Act 1999 on the basis that the information contained in the attached report is information of the nature specified in subsections 90(3)(b) and (d) of the Act being:

(b) information the disclosure of which;

- (i) could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and,
- (ii) would, on balance, be contrary to the public interest;

(d) commercial information of a confidential nature (not being a trade secret) the disclosure of which;

- (i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and,
- (ii) would, on balance, be contrary to the public interest;

The said information relates to the lease of the INEA YMCA.

### **Recommendation (Public)**

That pursuant to Section 90(2) of the Local Government Act 1999 Council order that the public be excluded, with the exception of the Administration being the Chief Executive Officer, Kiki Magro, the General Manager, Heather Barclay, the Property and Contracts Manager, James Forde and Protocol, Compliance and Governance Officer, Deb Bria from being present at the meeting on the

basis that the matter contained in this report is information of the nature specified in subsections

90(3)(b) and (d) of the Act being:

(b) information the disclosure of which;

(i) could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and,

(ii) would, on balance, be contrary to the public interest;

(d) commercial information of a confidential nature (not being a trade secret) the disclosure of which;

(i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party;

and,

(ii) would, on balance, be contrary to the public interest;

The said information relates to the lease of the INEA YMCA.

### **Recommendation (Confidential)**

1. That Council receives and notes the YMCA Status Report, May 2016.
2. That Council advise the INEA YMCA that their development proposal for the Smith Street Site and application for a lease extension be held until such time Council has completed its adopted program of work associated with Community Land; and has determined its “framework” for management and intent for its Community Land portfolio.
3. That Administration advises INEA of Councils decision in 2. above.

### **Recommendation (Confidential)**

That the Council, having considered the said information or matter in confidence under Part 3 of Chapter 6 of the Local Government Act 1999, orders, pursuant to Section 91(7) of the Local Government Act 1999, that the report 16.1.2 INEA YMCA Status Report, May 2016 dated 16 May 2016, and any other documentation relative to the report to be retained in confidence. In addition, that the minutes relating to this Agenda Item be kept confidential until this matter has been finalised excepting that the Council authorises the release of relevant documentation and that pursuant to Section 91(9)(c) of the Local Government Act 1999 the Council delegates to the Chief Executive Officer the review and power to revoke this Order;

and

That Council resolves to end its confidential deliberations pursuant to Section 90(2) of the Local Government Act 1999 Council and re-admit the public.

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### **Summary**

A Council Delegation (appointed by Council in August 2015), has broadly considered the INEA YMCA proposal for development of the Smith Street Site, and their request for a lease extension of 10 + 10 years.

In March 2016, the Council Delegation determined that any decisions associated with the INEA YMCA would need to be subject to;

- a) Legislation (and legislative requirements); ie: considerate of proposed Local Government Act Amendments (expected in early 2016), associated with Section 202; Alienation of Local Government Land;
- b) Councils current and adopted program for review of its Community Land Management Plans and Leasing and Licencing Policy (which intends to establish the “framework” for management and intent for Councils Community Land portfolio);
- c) Councils Town Centre DPA, (which proposes a Community Zone for the Smith Street Site, but is not considered or approved by the Minister for Planning);
- d) Any future / master planning for the Smith Street Site and general surrounds associated with regional and local needs and interests as it relates to active and passive recreation, and;
- e) Also, may need to consider the general locale – ie: future use of the Fuller Street Depot Site (not currently determined by Council), as a result of relocation of Depot Operations to Campbelltown City Council.

A Meeting with INEA YMCA in April 2016, canvassed the above and also the INEA YMCA's appetite for a longer term view and for “.....alternative and more substantial development opportunities.....”, (per Councils November 2015 resolution) for the Smith Street Site.

The INEA YMCA indicated an openness to consider “.....alternative and more substantial development opportunities....” and suggested a ‘Working Group’ be established to progress a discussion with Council representatives towards a potential collaborative and development of plans in that regard.

The Administration provided advice regarding probity and that such an initiative could only be at the discretion of Council (ie: to be referred to May 2016 Council).

It is the Administration’s position that the recommendation (herein), reinforces Councils already adopted and commenced process to determine the framework for management and intent for its Community Land Portfolio. Operating outside of this adopted process could pre-empt outcomes and could create incongruities in the process, and also may not be align to the Local Government Act 1999, as it relates to process for management and leasing of Local Government Land.

The recommendation is presented for adoption or otherwise.

## **Background**

Members will be aware of reports presented to Council (in confidence) at the August and November 2015 Ordinary Council Meetings, as it relates to INEA YMCA.

In August 2015, Council resolved the following;

“That the request from INEA YMCA (Inner North East Adelaide, Young Men’s Christian Association), on 10 July 2015 (via email), from Mr David Clayton on behalf of the INEA YMCA Board, requesting Council consideration to a new lease term, 10 years + 10 year right of renewal is being considered by Council, pursuant to section 202 of the Local Government Act 1999 and the Chief Executive Officer, General Manager, Mayor and Deputy Mayor meet with the INEA YMCA to further discuss their request”.

Administration including the Chief Executive Officer, the General Manager and the Property and Contracts Manager together with the Mayor and Councillor Shetliffe (“**the Council Delegation**”)

Subsequently met with representatives of the INEA YMCA on 22 October 2015.

The purpose of the meeting was to hear the INEA YMCA’s submission/proposal relating to their request.

At the meeting, the INEA YMCA unveiled plans to redevelop the site (development proposed being valued at an estimated cost of approximately \$300,000).

Members may recall the INEA YMCA suggested funding by way of a loan facility obtained through the LGFA. INEA YMCA also indicated an intention to seek a grant from the Office of Recreation and Sport. They indicated however, at this stage, no application has been made to the State Government as it relied on lease tenure discussions.

A status report to the November 2015 Ordinary Council Meeting (in confidence) apprised Members regarding the above discussions with INEA YMCA. Council subsequently resolved;

“The Report entitled “YMCA Update” be received and noted and the proposed process therein to consider the YMCA proposal be adopted, viz;

a) A workshop be convened including the Council Delegation to consider the YMCA proposal and the potential next steps as it relates to:

- the proposed development by the YMCA;
  - alternative and more substantial development opportunities involving the YMCA (joint ventures for example); and;
  - leasing arrangements.
- b) A report (in confidence) be provided to Council following step 1 above.
- c) The YMCA be apprised of Council's progress"

The INEA YMCA was advised of Council's decision in a letter to them, dated 20 November 2015.

The purpose of this report is to apprise Members of actions/deliberations since November 2015.

### **Discussion/Issues for Consideration**

In response to the November 2015, decision (above), a Meeting was convened on 18 March 2016, including the Council Delegation, to discuss the INEA YMCA proposal (\*Note: the Christmas period together with leave of delegation members delayed an earlier Meeting. INEA YMCA, were informed regarding the delays). At the 18 March 2015 Meeting it was noted that any decisions associated with the INEA YMCA proposal (including site redevelopment and a request for 10+10yr lease extension) would need to be subject to;

- f) Legislation (and legislative requirements); ie: considerate of proposed Local Government Act Amendments (expected in early 2016), associated with Section 202; Alienation of Local Government Land;
- g) Councils current and adopted program for review of its Community Land Management Plans and Leasing and Licencing Policy (which intends to establish the "framework" for management and intent for Councils Community Land portfolio);
- h) Councils Town Centre DPA, (which proposes a Community Zone for the Smith Street Site, but is not considered or approved by the Minister for Planning);
- i) Any future / master planning for the Smith Street Site and general surrounds associated with regional and local needs and interests as it relates to active and passive recreation, and;
- j) Also, may need to consider the general locale – ie: future use of the Fuller Street Depot Site (not currently determined by Council), as a result of relocation of Depot Operations to Campbelltown City Council.

In relation to Council resolution associated with; ".....alternative and more substantial development opportunities involving the YMCA (joint ventures for example)". the delegation also considered that the above matters, a). thru e). should apply to any deliberations associated with alternative or more substantial development (viz; that determination of legislation, and operating frameworks be determined in the first instance).

In summary, the essence of considerations (from the 18 March 2016 Meeting) being (not to pre-empt, but) to await Councils direction regarding its management framework for Community Land.

Notwithstanding, it was resolved that the Delegation should meet with INEA YMCA, to more fully ascertain their proposal and position (as it relates to leasing) and to understand their position regarding any ".....alternative and more substantial development opportunities...." for the Smith Street Site.

The Meeting was convened on 19 April 2016, and included the Council Delegation (excluding Councils Property and Contracts Manager), and representatives from INEA YMCA (Tony Pederick, David Clayton and Scott Dalgleish).

The Mayor opened the Meeting and provided an overview of constraints and influencing factors associated with the INEA YMCA proposal, per the above matters, a). thru e).

The INEA YMCA indicated their desire to invest in the Smith Street Site per their (\$300k proposal), but also indicated that such investment by them would need to be supported by a lease term aligned to reflect their investment.

The Delegation sought advice as to whether market research had been undertaken to inform the type of investment being envisioned and/or any other “.....alternative and more substantial development opportunities....” for the Smith Street Site.

While some advice was provided (in particular regarding Gymnastics), it appeared that no specific piece of research was apparent.

Councillor Shetliffe canvassed the INEA YMCA’s appetite for a longer term view and for “.....alternative and more substantial development opportunities....” for the Smith Street Site, to maximise value in community and financial terms.

The INEA YMCA indicated an openness to consider “.....alternative and more substantial development opportunities....” and suggested a ‘Working Group’ be established to progress a discussion with Council representatives towards a potential collaborative and development of plans in that regard.

The Administration provided advice regarding probity and that such an initiative could only be at the discretion of Council (ie: to be referred to May 2016 Council).

In relation to the above, and per the deliberations of the Delegation in March 2016, it is considered that;

It would be pre-emptive to consider lease tenure and any “.....alternative and more substantial development opportunities....”, outside of the work that Council is currently undertaking associated with determination of legislative requirements /constraints (LGAct Section 202); and establishment of Councils “framework” for management and intent for its Community Land portfolio.

In addition, and notwithstanding an understanding of the legislative framework is yet to be determined as it relates to Community Land Leases within the Town of Walkerville, it is considered that limiting opportunities to the current Smith Street Site Lease holder, by developing plans with them, may be contrary to competitive procedural fairness and general probity principles.

Based on the above it is recommended that Council advise the INEA YMCA that their proposal and application for a lease extension is held until such time Council has completed its adopted program of work associated with Community Land.

Alternatively, Council may establish a ‘Working Group’ to progress a discussion with INEA YMCA representatives, as proposed by them, however, such action could be seen as negotiating outcomes with individuals and not competitive.

## **Options for Consideration**

### **Option 1**

1. That Council advise the INEA YMCA that their development proposal for the Smith Street Site and application for a lease extension be held until such time Council has completed its adopted program of work associated with Community Land and has determined legislative requirements /constraints (LGAct Section 202); and establishment of Councils “framework” for management and intent for its Community Land portfolio.

2. That Administration advises INEA of Councils decision in 1. above.

**Option 2**

1. That Council establish a ‘Working Group’ to progress a discussion with INEA YMCA representatives towards a potential collaborative approach to development, inclusive of determination of lease subject to legislative requirements.

2. That Council appoints the following Elected Members to the Smith Street Site Working Group;

Working Group Member 1	
Working Group Member 2	
Working Group Member 3	

3. That Administration advise INEA of Councils decision in 1. and 2. above.

**Analysis of Options**

**Option 1**

Option 1 is appropriate on the basis that Council has already adopted and commenced a process to determine the framework for management and intent for its Community Land Portfolio. Operating outside of this adopted process could create incongruities in the process and may not be align to the Local Government Act 1999, as it relates to process for management and leasing of Local Government Land.

**Option 2**

Option 2, could be seen as negotiating outcomes with individuals and not competitive.

**Community Implications**

The management and leasing of Community Land must be aligned to Councils CLMP’s, Community Land Management Plans (currently under review), and relevant legislation (namely the Local Government Act 1999). Revised CLMP’s will be the subject to community consultation.

**Governance Implications**

Council is required to adhere to Local Government Act 1999, requirements as it relates to Community Land.

**Preferred Option & Reasoning**

Option (1)

It is the Administration’s position that the (Option 1) recommendation (herein), reinforces Councils already adopted and commenced a process to determine the framework for management and intent for its Community Land Portfolio. Operating outside of this adopted process could create incongruities in the process and may not be align to the Local

Government Act 1999, as it relates to process for management and leasing of Local Government Land.

The recommendation is presented for adoption or otherwise.