

Meeting: Council
Title: YMCA Lease
Responsible Manager: General Manager, Heather Barclay
Author: General Manager, Heather Barclay
Type of Report: **Decision Required**

Item No: 16.1.1

File No: 16.51.2.1

Date: 17 August 2015

Attachment: A & B

Recommendation

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) of the Act being:

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;

Recommendation (Public)

Pursuant to section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public, except, Chief Executive Officer, Kiki Magro, General Manager Heather Barclay and Protocol, Compliance & Governance Officer, Deb Bria be excluded from attendance at the meeting for Agenda Item No.16.1.1 YMCA Lease.

The Council is satisfied that, pursuant to section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which 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.

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information. The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances.

Recommendation (Confidential)

Moved:

Seconded:

That Council resolves - :

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 be formally declined.

Recommendation (Confidential)

Moved:

Seconded:

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 Agenda Item No.16.1.1 YMCA Lease and any other documentation relative to the report to be retained in confidence including minutes in relation to this Agenda Item No.16.1.1 and minutes relating to Agenda Item No.16.1.1 be kept confidential until the matter has been finalised excepting that the Council authorises the release of the minutes to those parties identified in the substantive resolution relating to agenda item 16.1.1 and that pursuant to Section 91(9)(c) of the Local Government Act 1999 the Council delegates to the Chief Executive the review and power to revoke this Order.

Recommendation (Confidential)

Moved:

Seconded:

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.

Purpose of Report

The purpose of this report is to present correspondence received 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, and provide recommendations regarding the same for consideration and adoption or otherwise.

Relevance to Strategic Plan and / or Corporate Plans

A Lively Local Culture

Objective 1

Encourage active community involvement in events, activities and places.

An Economically Successful Community

Objective 1

Create and active, well-connected Town Centre.

Background

Correspondence has been received 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 + a 10 year right of renewal.

A copy of the correspondence is included in **Attachment A**

Members are advised that in May 2014, Council entered into a new lease with INEA YMCA, for a term of five years, which expires on 31st December 2018.

A copy of the lease between Council and INEA YMCA is included in **Attachment B**

In relation to leases, the Local Government Act 1999, refers;

202 Alienation of community land by lease or licence

- 1) *A council may grant a lease or licence over community land (including community land that is, or forms part of, a park or reserve).*
- 2) *Before the council grants a lease or licence relating to community land, it must follow the relevant steps set out in its public consultation policy.*
- 3) *However, a council need not comply with the requirements of subsection (2) if*
 - a) *the grant of the lease or licence is authorised in an approved management plan for the land and the term of the proposed lease or licence is five years or less;*
or
 - b) *the regulations provide, in the circumstances of the case, for an exemption from compliance with a public consultation policy.*
- 4) **A lease or licence is to be granted for a term not exceeding 21 years and the term of the lease or licence may be extended but not so that the term extends beyond a total of 21 years.**
- 4a) *Subsection (4) does not prevent a new lease or licence being granted at the expiration of 21 years (subject to the other requirements of this Act or any other law)*
- 5) *A lease or licence may provide for;*
 - a) *the erection or removal of buildings and other structures for the purpose of activities conducted under the lease or licence;*
 - b) *the exclusion, removal or regulation of persons, vehicles or animals from or on the land, and the imposition of admission or other charges;*

c) any other matter relevant to the use or maintenance of the land.

6) A lease or licence must be consistent with any relevant management plan.

By way of background in November 2013, Council received a report regarding the INEA YMCA Lease; it referred;

“The Young Men’s Christian Association of Inner North East of Adelaide Inc (‘INEA YMCA’) is currently holding over its licence of the building at part of 39 Smith Street, Walkerville, SA 5081 (‘Facility’) under a licence agreement (‘Licence Agreement’) dated 14 April 2003 between the INEA YMCA and Council (‘Licence’).

INEA YMCA moved to the 39 Smith Street premises in 1965, and the Facility as it currently stands was completed in approximately 1985.

Council records provide that the building was built and paid for by the INEA YMCA through donations, fund raising, grants and loans from Council. The Licence fee (‘Licence Fee’) commenced at \$200.00 per annum, with an annual increase in the rate, calculated based on CPI increases.

Last year, YMCA paid a Licence Fee of \$303.74 for the financial year ending 2012/2013, on 16 November 2012. The Licence Fee is meant to reflect ground rental only in relation to the land on which the Facility was erected.

*The term for the Facility **commenced on 15 November 2001** and expired on 14 November 2011, with a right of renewal for “10 years, subject to Council resolution”.*

The INEA YMCA had (by letter dated 17 June 2011) sought to renew its Licence for a period of ten (10) years from 15 November 2011 to 14 November 2021.

Council considered the renewal of the INEA YMCA’s licence with regard to the use of the premises, the compliance works and on-going maintenance required for the building and the value that INEA YMCA provides to the Walkerville community, and determined (by resolution OM210/11) that a renewal for three (3) years, from 15 November 2011 to 15 November 2014 was appropriate”.

Subsequent to the above, on 18 November 2013, Council resolved, under resolution CNC172/13-14, to offer a new lease to the Inner North East Adelaide Young Men’s Christian Association (‘INEA YMCA’) in respect of the facility at part of 39 Smith Street, Walkerville for a term of 5 years.

The new lease (May 2014), for a 5 year term, has been established under contemporary lease terms and includes schedules that clearly define maintenance roles and responsibilities of the lessee and the lessor.

Members may recall that Council is currently in the process of ‘cleaning-up’ leases. Council has adopted new “Lease and Licence Policy for Community Land & Buildings” and has also adopted an associated Leasing Model. The new lease with INEA YMCA has been established under the new model.

Issues for Consideration

The request received from INEA YMCA from David Clayton on behalf of the INEA YMCA Board, requesting Council consideration to a new lease term, 10 years + a 10 years right of renewal, is contrary to Local Government Act (LGA) provisions, in that the term must not extend beyond a total of 21 years in entirety.

In this regard, it appears (from previous Council Reports) that a lease has been held by the INEA YMCA since November 2001, with the current (new model) lease set to expire in December 2018. Accordingly, at the cessation of the lease in 2018, the lease term in entirety would be in excess of 17 years.

Accordingly, Council may consider granting a right of renewal to INEA YMCA up to a period in entirety of 21 years (subject to community consultation), but not exceeding that term.

At the expiration of the term of lease with INEA YMCA, Council (pursuant to the LGA) would be bound to 'test the market' for the service, via a tender process to ensure good governance, fairness, equity and non-discriminate competition in relation to the YMCA site.

Options for Consideration

Option 1

Council receives and notes the correspondence from INEA YMCA requesting consideration to a new lease term, 10 years + 10 years right of renewal, and declines the request.

or;

Option 2

Council receives and notes the correspondence from INEA YMCA requesting consideration to a new lease term, 10 years + 10 years right of renewal, and declines the request, but offers a right of renewal on the current lease (due to expire on 31 December 2018), until 15 November 2022 (only), subject to community consultation.

Analysis of Options

Based on information contained in previously received and endorsed Council Reports during 2013 and 2014, both Option 1 and Option 2 are aligned to and comply with LGA provisions.

However, given the time taken and considerations by Council in negotiating a new model lease in 2014, it is recommended that Council maintains its current agreement with INEA YMCA (expiry 2018), and advises INEA YMCA in accordance with Option 1, above.

Financial and / or Risk Implications

The current lease/agreement with INEA YMCA, will continue until 31 December 2018.

Social

Services provided by the lessee contribute to community health and well-being, and are aligned to Councils Strategic Plan.

Environmental

Per above (Social)

Governance

The provision for services at the INEA YMCA site accords with Council current Community Land Management Plan for the site.

Preferred Option & Reasoning

It is recommended that Option 1, above be adopted.

Council is bound by the provisions of the Local Government Act as it relates to Alienation of Community Land, in that existing leases/agreements cannot extend beyond 21 years in entirety.

Agreement to the request by INEA YMCA for a 10 year + 10 year lease extension would create a situation whereby Council is acting contrary to the laws unto which it is bound.

Accordingly, it is recommended that the request from INEA YMCA be declined.

Attachment A – Correspondence from INEA YMCA –request for lease extension received 10 July 2014

Attachment B – INEA YMCA current Lease Agreement.

