



the bushland shire

creating a living environment

SUPPLEMENTARY BUSINESS PAPER

ORDINARY MEETING

**Wednesday, 24 August, 2011
at 6.30pm**

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**29 EXTENSION OF LEASE APPLICATION FROM YMCA OF SYDNEY-
EPPING YMCA CENTRE AND WEST EPPING PARK TENNIS CENTRE**

EXECUTIVE SUMMARY

In April 2011 an application was received from the YMCA of Sydney (YMCA) seeking to consolidate their tenure over the community building in West Epping Park, West Epping (the Epping YMCA Centre) and the West Epping Tennis Court Centre (off Grant Close) West Epping. The YMCA has also requested a combined lease of the two Centres for an additional period of 21 years to secure and protect the substantial capital outlay (in the vicinity of \$1.1 million) to be invested as part of their planned redevelopment of the Epping YMCA Centre.

Having regard to the long term association of the YMCA at West Epping Park and the benefits the organisation has provided to the community through the use of the Epping YMCA Centre, officers consider that the request to extend the tenure over the Epping YMCA Centre for twenty one years can be supported.

It is also recommended that the lease for the Tennis Centre at Grant Close, West Epping not be combined with the Epping YMCA Centre for twenty one years but that an invitation to lease the Tennis Centre be undertaken on the same basis as approved by Council under Report EN16/11. This action will demonstrate Council's commitment to the equitable allocation of Council's assets to the community whilst still providing the YMCA an opportunity to continue their occupation of the centre.

PURPOSE/OBJECTIVE

The purpose of this Report is to respond to Council's resolution under Report PLN 49/11; to provide information for Council's consideration concerning the application received on behalf of the YMCA of Sydney concerning the long term lease of both the Epping YMCA Centre and West Epping Tennis Court Centre and; for Council to determine its preferred course of action in respect of the future leasing requirements of both Centres.

DISCUSSION

Background

Occupation of the Epping YMCA Centre and West Epping Park Tennis Court Centre by the YMCA

Following construction by Council in 1966 (with funding assistance from the YMCA) a community building (the Epping YMCA Centre) located within West Epping Park (off Ward Street), West Epping, has been leased to the YMCA of Sydney (YMCA) under a number of lease agreements. West Epping Park is contained within Lot 100 in Deposited Plan 834523 and is currently classified as Community Land, with the area of land upon which the Epping YMCA Centre is located, categorised as General Community Use. Council's District One Generic Plan of Management expressly authorises the lease of the Epping YMCA Centre to the YMCA. The park is zoned Open Space A (Public Recreation- Local) in the Hornsby LEP 1994.

Since the YMCA commenced occupation it has undertaken a number of extensions to The Epping YMCA Centre, at their cost, to accommodate the demands and needs of the community seeking to use their facilities. At this point in time the YMCA has two separate lease agreements with Council. The first lease (Lease One) covers the main hall section that commenced in April 1988, for a term of 20 years with an option to renew for a further period of 20 years. The second lease (Lease Two) was granted by Council in 1999 in respect of an additional area at the Epping YMCA Centre for a period expiring on 18 November 2007, with an option to renew for a further period of 12 years. Since the construction and occupation of the Epping YMCA Centre Council has fully subsidised any rental payable by the YMCA.

Whilst the YMCA correctly exercised their option under Lease Two the option under Lease One was not exercised in the correct manner due to an administrative oversight. Accordingly the YMCA presently occupy the Epping YMCA Centre under a current lease (Lease Two) that will expire in 2019 and in accordance with the holding over provisions of an expired lease (Lease One).

In 1991 Council entered into a lease agreement with the YMCA in respect of Tennis Court complex located within West Epping Park (off Grant Close), West Epping for a period of ten years with one option to renew the lease for a further period of ten years. The tennis court complex is located within Lot 101 in Deposited Plan 834523 and is currently classified as Community Land with the area of land upon which the Tennis Courts are located is categorised as Sportsground. Council's District One Generic Plan of Management expressly authorises the lease of land for Tennis Court purposes. The section of the park is zoned Open Space A (Public Recreation- Local) in the Hornsby LEP 1994.

The option lease expired on the 30 June 2011 and the YMCA is currently occupying the courts on a month to month basis. In accordance with the terms of the occupation the YMCA are responsible for the day to day management of the centre and retain 80% of the court hire income. Council receives the balance (20%) of court hire income, which it uses to fund the tennis court capital works program. Tennis court lessees can apply to Council for funds on a dollar for dollar basis for asset upgrades and improvements to the tennis centres.

Following a meeting with the General Manager and Council's Assessment Team 1 Manager in April 2011 the YMCA has now submitted an application (see confidential attachment 1) seeking an extension of their current leases and conditions of the Epping YMCA Centre for a total term of 21 years, to be effective from the completion a planned major redevelopment of the Centre that was approved by Council under Development Application DA No. 19/2010. The YMCA is also seeking to consolidate the occupation of the tennis centre at West Epping Park into the above lease. The YMCA is seeking the lease extension/consolidation to secure and protect the substantial capital outlay (in the vicinity of \$1.1 million) to be expended in redeveloping the Epping YMCA Centre. The redevelopment work will involve the infill of the existing undercover car parking area located under the eastern end of the Epping YMCA Centre, reconfiguration of the internal layout of the Epping YMCA Centre and construction of a new car park on the eastern side of the Epping YMCA. Comments concerning the lease proposal are provided below for Council's information and consideration.

Comments on Lease Extension Application (the Epping YMCA Centre)

In accordance with the provisions of Section 46 of the Local Government Act 1993 a lease of community land may be granted in accordance with an express authorisation in the plan of management and such provisions of the plan of management as apply to the granting of the

lease. In addition a Council must not grant a lease or licence (including any period for which the lease or licence could be renewed by the exercise of an option) exceeding 21 years.

Having regard to the long term association of the YMCA at West Epping Park and the benefits the organisation has provided to the community through the use of The Epping YMCA Centre, officers consider that the request to extend the tenure over the Epping YMCA Centre can be supported. Having regard to the circumstances surrounding the existing contractual arrangements with the YMCA as mentioned above, should Council support the granting of a 21 year lease it should commence on the date that an occupation certificate is issued in respect of the refurbishment work proposed at the YMCA Centre. In addition, the existing contractual arrangements in respect of the YMCA Centre should also be terminated from that date.

Council at its Planning Meeting of 6 July 2011 gave approval to stage the works associated with Development Application No. 19/2010/A. The YMCA will fund the capital construction of the car park. The new car park is not included in the 21 year lease for the YMCA Centre.

As previously reported, Council in May 2007, adopted a Code for the Lease/Licence of Council Land and Buildings to Community Groups (the Code) to provide a framework for the equitable, efficient and effective lease/licence of Council's property assets to community groups. The Code was developed to assist Council officers to assess community group applications for the use of Council land and buildings in a transparent manner, based on agreed eligibility criteria, and to formula appropriate lease/licence terms and conditions for consideration by Council.

Although a formal assessment of the YMCA lease application has not been undertaken in line with the provisions of The Code, officers are of the opinion that should Council be supportive of extending the YMCA's lease of the Epping YMCA Centre, the provisions of the Code should apply. Taking into consideration the nature of the organisation, the terms of occupation that have applied over the past 45 years, and the capital contribution made by the YMCA to the Epping YMCA Centre over the years, officers consider that this lease application would generally fall under the "Nominal" category of the Code. In light of the above officers recommend that any future lease of the Epping YMCA Centre should be in line with the 'nominal' category of the Code as outlined in the RECOMMENDATION of this report.

Comments on consolidation of West Epping Park Tennis Centre into YMCA lease of the Epping YMCA Centre

Council considered report EN16/11 at the 18 May 2011 Ordinary meeting concerning a future leasing model of a number of tennis centres under the care, control and management of Council that would expire on 30 June 2011. It was indicated within Report EN16/11 that having regard to the receipt of an lease application from the YMCA to incorporate the tennis centre at West Epping Park into the lease of the Epping YMCA Centre at West Epping Park, it would be prudent to withdraw this centre from the list of centres that were the subject of Council's deliberations on the proposal to invite tenders under the proposed model. Further, it was also indicated that a separate report on this matter would be provided to Council. Comments concerning this matter are presented below.

While supportive of extending the YMCA's lease of the Epping YMCA Centre for a period of 21 years, officers do not consider that the consolidation of the Tennis Centre at West Epping Park into the same lease provides the best outcome for the community. As outlined in

Report EN16/11 a number of Council's tennis court centres, including the West Epping complex had been leased to various lessees under an income sharing arrangement for a period of 20 years that commenced in 1991. The centres were considered as income generating business units with the lessees retaining 80% of court hire income to cover running costs as well as capital replacement and improvements. The balance of the court hire income would be retained by Council and has been used to fund the tennis court capital works program described earlier.

Having regard to the period of time that had elapsed since a number of Council's tennis court centres were offered for lease in the open market, officers considered that it would be commercially prudent to seek submissions from the marketplace to lease those centres. This action would maintain consistency with Council's open and equitable processes and support contemporary asset management practices. While officers appreciate the rationale behind the request made by the YMCA to incorporate the West Epping Tennis Centre into their lease of the Epping YMCA Centre, officers are of the opinion that the West Epping Tennis Centre should be offered for lease in the open market with the other 7 tennis centres listed in report EN16/11 on the basis approved by Council under report EN16/11.

This action will demonstrate Council's commitment to the equitable allocation of Council's assets to the community whilst still providing the YMCA an opportunity to continue their occupation of the centre.

Accordingly, officers recommended that an invitation to lease the Tennis Centre at West Epping Park, (off Grant Close), West Epping be undertaken on the same basis as approved by Council under Report EN16/11. That basis being:

- Lease is to be for a maximum of 10 years.
- Courts must be available to the general public for hire a minimum of 50% of the time they are available for use.
- Rental is to be 30% of court hire fees for non profit clubs/associations and market rental for private/commercial operators.
- Rental fees are to be pooled by Council for a tennis court asset management fund which will be made available to lessees for capital improvements under a tennis court capital works grant program.
- Maintenance obligations for the lessee will extend to ongoing day to day maintenance and all capital asset maintenance although lessees can apply to Council for funding assistance through the tennis court capital works grant program.
- Requirement for affiliation to Tennis NSW
- Requirement for a business plan and asset management plan
- Commitment to work with Council and other operators to ensure a consistent delivery of tennis across the venues
- Requirement for attendance at an annual tennis court lessees meeting with Council

Legislative Considerations

In line with the provisions of Section 47 of the Local Government Act 1993, any proposal to lease community land is required to be publicly notified for a period of not less than 28 days. In respect of a lease for a term of greater than five years, Council must consider all submissions received and not grant any lease without the consent of the Minister for Local Government.

BUDGET

As the Epping YMCA Centre is currently occupied by the YMCA on a fully subsidised rental basis the implementation of the Officers' recommendation in this respect will have no adverse impact on the 2011/2012 Budget. Should Council be supportive of the Officers' recommendation concerning the West Epping Tennis Court Centre Council may, depending on level of interest received to the public invitation, achieve a modest increase in income from its Tennis Court assets.

POLICY

This Report has been prepared having consideration to the Code for the Lease/Licence of Council Land and Buildings to Community Groups.

CONSULTATION

There has been consultation with representatives of the YMCA and officers from the Parks and Landscape Branch in the preparation of this Report.

TRIPLE BOTTOM LINE SUMMARY

Triple Bottom Line is a framework for improving Council decisions by ensuring accountability and transparency on social, environmental and economic factors. It does this by reporting upon Council's strategic themes. If Council was to proceed with the recommendations proposed in this Report, contribution would be made to the following strategic themes:

- Society and Culture – enhance social and community well-being.
- Economy – vibrant local economy and sustainable resource use.
- Human Habitat - effective community infrastructure and services.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Manager, Commercial Property – Rod Drummond – who can be contacted on 9847 6589.

RECOMMENDATION

THAT:

1. Council issue a public invitation to lease the Tennis Court Centre located on West Epping Park (off Grant Close), West Epping for a maximum term of ten years on the basis outlined within this Report.
2. Submissions received in respect of the public invitation to lease the Tennis Court Centre be reported to Council's for its consideration.
3. The proposed lease to the YMCA of Sydney over the Epping YMCA Centre in West Epping Park, West Epping be publicly advertised and submissions invited within a period of not less than 28 days.
4. Should submissions be received objecting to the lease proposal for the Epping YMCA Centre (excluding the Tennis Court Centre), a further report be provided for Council's consideration.
5. Subject to the outcome of recommendations 3 and 4, Council grant a 21 year lease to the YMCA of Sydney of the Epping YMCA Centre in accordance with Sections 46 and 47 of the Local Government Act 1993 (Lease/Licence of Community Land on the following basis:

- a. The rental to be at the rate of \$320.00 per annum inclusive of GST during the initial 12 months of tenure.
- b. The rental to be subject to annual review in accordance with the movement in the Consumer Price Index and the provisions of the Code for the Lease/Licence of Council Land and Buildings to Community Groups.
- c. The lessee to be responsible for the payment of 50% of any assessed Council and or Water rates.
- d. The lessee to be responsible for the payment of all operating costs including all telephone line rental and calls, electricity and building insurance premiums.
- e. The lessee to be responsible for the payment of 50% of lease preparation costs and all statutory advertising costs.
- f. The lessee to be responsible for the full maintenance and capital improvement of the Centre.
- g. The lessee to be responsible for security and cleaning of the Centre.
- h. The lessee to indemnify Council against all claims in respect of public liability to an amount not less than \$20 million, with such public liability policy to note Council as an interested party.
- i. The premises to be only used for activities associated with the YMCA of Sydney.
- j. The lessee to acknowledge Council's support in respect to the provision of the land in its annual reports and publications, any advertising and community events.
- k. The lease to commence from the date the lessee obtains the relevant occupation certificate following completion of the proposed refurbishment works.
- l. The current lease agreements with the YMCA of Sydney in respect of the Centre to be terminated effective from the date of the occupation certificate mentioned in point k above.

ROBERT STEPHENS
Executive Manager
Environment Division

Attachments:

1. Attachment: Lease Extension Application from YMCA of Sydney - *This attachment should be dealt with in confidential session, under Section 10A (2) (d) of the Local Government Act, 1993. This report contains commercial information of a confidential nature that would, if disclosed (i) prejudice the commercial position of the person who supplied it; or (ii) confer a commercial advantage on a competitor of the council; or (iii) reveal a trade secret.*

File Reference: F2009/00832
Document Number: D01730496

