

TOWN OF COTTESLOE



SPECIAL COUNCIL MEETING

ATTACHMENT 1

ITEM 9.1

INDIANA REPORT – AUGUST ORDINARY COUNCIL MEETING (22 AUGUST 2017)

10.1.12 INDIANA TEA HOUSE – CONSIDERATION OF OFFER FROM LESSEE

File Ref: SUB/2449
Attachments: Nil
Responsible Officer: Mat Humfrey
Chief Executive Officer
Author: Mat Humfrey
Chief Executive Officer
Proposed Meeting Date: 22 August 2017
Author Disclosure of Interest: Nil

SUMMARY

The Town has recently received an offer from Indiana Pty Ltd to settle the current market rent review process and to transfer care, control and management of the public toilets back to the Town on an ongoing basis.

Council is being asked to consider that offer and set in place a process to determine whether or not the offer will be accepted.

BACKGROUND

Between 1996 and 2000, a series of Council resolutions and agreements saw the building, commonly known as Indiana Tea House, built on Cottesloe Beach and leased on a long term basis. The initial lease was for a period of 21 years (expired in August 2016), however subsequent events saw the lease extended for a period of 25 years (in the form of a 15 year option and a 10 year option). At the exercise of the first option, and at each 5 years there after, the rent for the lease is reset at market value. In the intervening years, rent increases by CPI.

In late 2016, the process of agreeing the new market value began. The Town has received a valuation of \$219,000 for the site, which was provided to the lessee as evidence for a new market rent value. The lessee engaged their own valuer, as the lease allows them to, who provided a rental figure of less than \$100,000. In order to determine the market rent, a process of agreement between the two valuers was then required. This process appears to be drawing to a close with the offer provided by the lessee.

The public toilets at the Indiana Tea House have been an issue for some time. In April 2015, the Cottesloe Residents and Ratepayers Association presented the Town with the “Toilet Seat of Shame” at the Ordinary Council Meeting to express their dissatisfaction with the state of the toilets (cleanliness and maintenance) as they were at that time. It was made clear to the Council of the time, that the control of the toilets being with the lessee was not an acceptable excuse and that the Town should make efforts to get the toilets back under the Town’s control. More recently at the 2016 Annual Electors Meeting, the Residents and Ratepayers Association, via their secretary, stated the toilets should be renovated by the Town rather than continuing with legal action. The offer put forward by the lessee would allow this to occur.

During the last two summers, the Town took back control of the cleaning of these facilities and the number of complaints has significantly reduced. However, the Town

did not take back maintenance of the facilities, which is now being considered. By allowing the Town to undertake maintenance (including preventative maintenance), the ongoing issue with the toilets could be resolved.

STRATEGIC IMPLICATIONS

Priority Area 3 – Enhancing beach access and the foreshore

Strategy 3.2 – Continue to improve access to beach facilities

Actions

- b. Renovate and improve public ablutions at Cottesloe Beach
- c. Provide universal access to all facilities at Cottesloe Beach

POLICY IMPLICATIONS

Nil

STATUTORY ENVIRONMENT

Local Government Act 1995

Local Government (Financial Management) Regulations 1996

The sections of the Act relating to the disposal of assets do not apply in this case as the Town is effectively receiving an asset. There does not appear to be any mandatory advertising required under this section, or any other section of the Act.

As the acceptance of the offer would require an amendment to the Town's budget, the relevant sections of the Act and Regulations would apply. If the Town accepts the offer, a budget amendment will be required to allow the toilets to be properly maintained.

FINANCIAL IMPLICATIONS

If the offer from the lessee is accepted, the rent for the Indiana Tea House increase from approximately \$140,000 to \$195,000. However the Town will need to allocate half of these funds (as an indication) to the cleaning and maintenance of the toilet facilities. That being said, if the Indiana Tea House was not present on the beach, the Town would have the full costs of cleaning and maintaining a set of public toilets with no income at all to defray the costs.

STAFFING IMPLICATIONS

There are no direct staffing implications arising from the officer's report.

SUSTAINABILITY IMPLICATIONS

There are no direct sustainability implications arising from the officer's recommendation. If the Council ultimately resolves to accept the offer from the lessee, there could be sustainability benefits if the facilities are updated and more efficient equipment and fittings used.

CONSULTATION

It is being recommended that Council authorise the Chief Executive Officer to give notice that an offer has been received from the lessee for the Town to take care, control

and management of the existing public toilets at the Indiana Tea House. This notice would provide 14 days for people to comment before Council ultimately determine whether or not to accept the offer.

The Town's Community Consultation Policy does not appear to make any comment on this type of agreement being the subject of consultation, however amendments to existing lease arrangements are rare, particularly where a part of the leased area is being returned (rather than a new area being added to the lease). Given the most likely reason this scenario is not specifically mentioned in the Policy is that it rarely occurs, and the intent of the policy suggests that major or profound change should be the subject of notices, officers are recommending a short period of public notice to allow for residents and ratepayers to make comment.

STAFF COMMENT

Other Maintenance

It is important to note that the lessee would still remain responsible for all other maintenance at the Indiana Tea House. The Town would only be responsible for the cleaning and maintenance of the public toilets under the offer provided. The Town has care control and management of other parts of the premises (surf club facilities and a small office) under an existing sublease arrangement.

The current advice is that the Town would be responsible for the care, control and management of the toilet facilities, but that this would not include anything outside of these areas – such as the sewers and drains. The Town would also conduct an audit of the facilities before resuming control to ensure any outstanding maintenance items are seen to before they become the Town's responsibility.

Cleaning

The Town has taken responsibility for the cleaning of these toilets for the last two summers and all indications are that this has resulted in far fewer complaints than was previously experienced. There were still issues from time to time with regards to maintenance and several instances were requested maintenance had to be followed up several times (although it should be noted that the work was done). It is believed that by having responsibility for the maintenance too, the Town will be able to achieve a greater level of cleanliness than it has previously been able to as preventative maintenance can also be scheduled appropriately.

Consultation

While these decisions should not be rushed, it would be advantageous to reach agreement in time for arrangements to be set in place for the upcoming summer season (if that is what Council determines to do). Given that large sections of the community have previously stated their opinions that the Town should take control of the toilets and maintain them to the level the community expects, this offer is seen as a positive one that will allow the Town to meet these requests.

Rent

The offer as presented does represent a compromise. As stated in the financial implications section, the Town will need to spend more than the current rent increase in cleaning and maintaining the toilets in that area. However, it should be noted that if Indiana were not there at all, the Town would still be expected to clean and maintain a set of public toilets with no rent income to defray the costs at all.

In recent years, the Town has agreed to take the toilets back for the 6 busiest months of the year, with the lessee contributing what they would normally pay for the cleaning of the toilets to the Town. This resulted in the Town paying the difference between what was commercially required by the lessee as opposed to what would be paid to maintain the toilets from a public interest perspective. Essentially this offer would extend these previous arrangements to a 12 month, ongoing agreement, and as such is recommended by officers.

Funding

If the care, control and management of the toilets returns to the Town, there will be an expectation that some of the facilities (such as universal access facilities) are improved to meet modern standards. Moreover, there will also be an expectation that the general amenity of the toilets is improved by simple renovations. Such renovations will also likely result in a reduction of ongoing cleaning costs.

Given the profile of Cottesloe Beach and the type of upgrades that would be considered, officers are confident that grants will be available to the Town to offset some of these costs. Either via water efficiency grants, tourism grants or grants to improve universal access – there is assistance to local governments in this respect.

Conclusion

The offer provided by the lessee was not solicited by the Town and has arisen as a result of the market rent review process. The Town has asked the lessee to consider returning other areas of the facility to the Town's care and control since receiving the above offer, but they have declined that request at this stage.

Officers see this offer as an opportunity to resolve a long running issue for the community and as such are recommending it for approval, subject to community consultation.

VOTING

Simple Majority.

OFFICER RECOMMENDATION

Moved Cr Rodda, seconded Cr Angers

That Council

1. Authorise the Chief Executive Officer to give local public notice of the offer received from Indiana Pty Ltd that;
 - a. Sets the outcome of the market rent review at \$195,000 per annum;
 - b. Sees care, control and management of the public toilets in the Indiana building return to the Town; and
 - c. Submissions be sought for a period of 14 days after which a Special Council Meeting will be held to determine whether the offer is accepted.

AMENDMENT 1

Moved Cr Boulter, seconded Cr Pyvis

That point one is preceded by the words:

“Subject to receiving a second independent expert legal opinion about the lease generally and the Lessee’s offer to return the toilets, and that opinion raising no issues that should be reviewed by Council before advertising the proposal; and

“Subject to the report by an expert hydraulic being received in terms of outstanding maintenance of items that could be leading to the smells around the toilets and any other items identified at a more thorough survey/inspection,”

And replace the words “a Special Council meeting” in 1(c) after the word “which” with the words “a report will be made to Council” and delete the words “will be held” from 1(c).

LOST 3/6

For: Crs Thomas, Boulter and Pyvis

Against: Mayor Dawkins, Crs Burke, Birnbrauer, Rodda, Angers and Downes

PROCEDURAL MOTION

Moved Cr Boulter, seconded Cr Pyvis

That Council suspend standing orders for the purpose of discussion on this matter.

LOST 3/6

For: Crs Thomas, Boulter and Pyvis

Against: Mayor Dawkins, Crs Burke, Birnbrauer, Rodda, Angers and Downes

AMENDMENT 2

Moved Cr Boulter, seconded Cr Pyvis

That a second point be added as follows:

That the expert hydraulic report referred to above relates to identifying any potential causes of the smells/future risk of smells around the Indiana toilet block including but is not limited to :

- 1. Inspecting the service duct for the Male Ablutions – the smell is there directly outside even with the door locked. Inspect all the pipework to the cistern flush pipes and whether or not they are leaking from the rubber connectors. Water is ponding on the floor and going bad and eventually flows out of the shaft – if the stack that connects to sewer is leaking and discharging on to the floor outside.*
- 2. If a second source of the smell is the grease trap – and if the lid is not sitting flush and if there is a hose tap within 6.0mtrs as required by the Water Corporation. Whether or not the Grease Trap has not been cleaned out properly and if the lid has been re-greased when taken up.*
- 3. If another source of the smell is the Sand Trap – if the lid like the grease trap is not sitting flush and if there is a hole in the lid.*
- 4. Camera inspections of the ductwork*
- 5. Identification of anything else that requires maintenance that would serve to eliminate the smells around and within the Indiana toilet block.*

LOST 4/5

For: Crs Thomas, Birnbrauer, Boulter and Pyvis

Against: Mayor Dawkins, Crs Burke, Rodda, Angers and Downes

OFFICER RECOMMENDATION AND COUNCIL RESOLUTION

Moved Cr Rodda, seconded Cr Angers

That Council;

- 1. Authorise the Chief Executive Officer to give local public notice of the offer received from Indiana Pty Ltd that;**
 - a. Sets the outcome of the market rent review at \$195,000 per annum;**

- b. Sees care, control and management of the public toilets in the Indiana building return to the Town; and
- c. Submissions be sought for a period of 14 days after which a Special Council Meeting can be held to determine whether the offer is accepted.

CARRIED 9/0