



January 31, 2014

Mr Carl Askew
Chief Executive Officer
Town of Cottesloe
PO Box 606
Cottesloe WA 6911

Dear Mr Askew,

Re: Wearne Cottesloe: Curtin Aged Persons Homes Inc. (Curtin Care)

Thank you for meeting with us late last year to discuss the tenure at Wearne Cottesloe.

Please find a proposal attached as requested.

We are formerly requesting:

- Tenure be transferred by Curtin Care with the original conditions that were placed on the land when it was vested to the four Councils; or
- A 99-year lease to Curtin Care that will enable us to work in partnership with the four Councils to redevelop the land.

We invite you to use this information in the development of your business plan for Council adoption. Please feel free to contact me on () or email () should you have any queries or need additional information.

Yours sincerely,

David Cox
Chairperson

Business Plan – Disposition of the Wearne Site (1 Gibney Street Cottesloe)

Background

In June 2009, the State transferred to the four local governments conditional title of the site of the old Wearne Hostel, located at 1 Gibney Street, Cottesloe. At the time the land was transferred, it was occupied by the group then known as Curtin Aged Persons Home (CAPH), which is now known as Curtin Care. The site was transferred to the four local governments in equal shares (25% each) for nominal consideration under section 75 of the *Land Administration Act 1997*.

Section 75 of the *Land Administration Act 1997* (LAA) allows for transfers of land to be undertaken where there is a community interest in doing so, usually because of the associated benefits of development. It is an unusual title, and not one that local governments usually have to contend with. Normally, when the Crown wishes to hand control of a portion of land to a local government for a specific purpose, the land is simply vested to the local government, by way of a management order. There are no records that have been discovered as to why this particular land was transferred under section 75 instead of being vested to the Town of Cottesloe.

The implications of section 75 are not clear and are open to interpretation as well as a number of competing scenarios. There are restrictions currently on the title which require that the land can only be used for *“the provision of care, accommodation and residential facilities for aged persons and all activities and matters relating to the provision of such care, accommodation and residential facilities”* and it is unlikely that the intent of these restrictions will be diminished. It is also unlikely that obtaining unrestricted title would be able to be achieved without considerable funds being made available to the State. However the ability of the Minister for Lands, in conjunction with the Treasurer, to be able to remove the restrictions with a reduced fee mean that the land could have some value, or possible value in outright ownership.

Even with all of the restrictions currently on the land, the land does have significant value to the local governments involved. While there is a current tenant in place, which needs to be respected, the land could be developed to provide accommodation in addition to that which is currently on the site. While there is a restriction on using the land for a commercial purpose, it doesn't prevent a benefit being derived from operations – which could be used to contribute to other service provision. Indeed it would appear the intention of the proposed acquirer of the land is to undertake a redevelopment, which would improve their long term viability.

Irrespective of the intentions of the parties involved at the time of transfer, which are not supported by any documentation, the *Local Government Act 1995* is clear that when an interest

in land is being disposed of, there are requirements that the local governments involved must follow. It is clear that the value of the land, even as submitted by the proposed acquirer of the land, is in excess of the level that requires a Business Plan to be developed and advertised, as required by section 3.59 of the Local Government Act.

1 Gibney Street, Cottesloe

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| | <ul style="list-style-type: none"> ROIs Lodged Cadastre Cadastre Aerial - Aug 2014 building outlines Car Parks Surrounding LGAs | <p>Parcel</p> <p>Polygon Number 11799255 Land Id Number 3830400 Calculated Area 20677.82 Area AREA 3 Ward South Ward</p> <p>Property</p> <p>Parcel Number 54687 Assessment Number 5074 Address 1 Gibney St Suburb COTTESLOE Title LOT: 555 D/P: 62538</p> <p>Volume Folio Property Description Wearne Hostel Heritage</p> <p>Owner</p> <p>Given Name(s) Surname/Company Town of Cottesloe</p> <p>Residential</p> <p>Address 109 Broome St COTTESLOE WA 6011 Type Rates Owner</p> <p>Home Phone Mobile Phone Business Phone</p> <p>Local Planning Scheme Development C</p> | | | | |
| | <p>Disclaimer: The Town of Cottesloe will not accept any responsibility for inaccuracies or errors within the data.</p> | <p>WEARNE HOSTEL</p> | <table border="1"> <tr> <td>1/04/2015</td> <td rowspan="2">A3</td> </tr> <tr> <td>1:1000</td> </tr> </table> | 1/04/2015 | A3 | 1:1000 |
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Proposed disposition

The four local governments, who each hold an equal share in the title for 1 Gibney Street Cottesloe, have been approached to either;

- a. Dispose of their interest in the title to Curtin Care for nominal consideration; or
- b. Provide a 99 year lease in favour of Curtin Care for nominal consideration.

PART A – DISPOSE OF THE INTEREST (25% OWNERSHIP) TO CURTIN CARE FOR NOMINAL CONSIDERATION

Curtin Care have approached the local government, as owners, to request that the 25% share currently being held by the local government be transferred to them for nominal consideration.

As required by the *Local Government Act 1995* (section 3.59) the following are listed as factors for consideration in this business plan;

1. The effect of the proposed transaction on the provision of facilities and services by the local government

At present, the local government neither expends any funds on the site in question, nor derives any meaningful income. As such, the net effect of the disposition on the current services and facilities provided by the local government is immaterial.

However, due to the value of the land in question, it could be seen that future incomes could be enhanced by a successful development on the site for the provision of aged services. If such a development could be undertaken, it is probable that a return would be available to the local government, which could offset the cost of providing services and facilities. The actual value of any future return is difficult to calculate due to a high number of variables in such a proposal.

2. The effect of the proposed transaction on the persons providing facilities and services within the district

As with point 1, the local government does not derive any funds or benefits from the land in its current form – hence, aside the current tenant, there is no material impact from the disposition of the land holding in its current form. However, any future development capable of providing a return to the local government could allow the subsidy of services or facilities within the local government.

With respect to the applicant, who does provide services in the field of aged accommodation and care, the current lease with them is restrictive in two ways, both as a result of the term of the lease. The first way in which the current arrangements are restrictive is the inability to provide long term security to aged care tenants. Secondly, the current term prevents further expansion or investment in the site. The proposed transaction would have a positive impact on those services by providing long term security over of tenure.

3. The effect of the proposed transaction on the financial position of the local government

The exact impact of the proposed transaction on the local government is difficult to determine – due to two factors. The first is the ambiguity around any future or possible disposition of the site. The restrictions on title require that any disposition needs to be approved by the Minister for Lands – which does create some uncertainty. It is also not clear what cost would be involved

in having such restrictions lifted, as mechanisms do exist to allow the restrictions to be lifted at discounted values.

The second area of ambiguity is in uses for which the site is allowed. The Certificate of Title for the conditional tenure does provide that the land is only to be used for *“the provision of care, accommodation and residential facilities for aged persons and all activities and matters relating to the provision of such care, accommodation and residential facilities”*. Letters from the relevant department also state that this includes the provision of a facility under the Retirement Villages Act 1992.

Currently, the local government has a value attached to the site of \$7,893,750 being its 25% share of the “fair value” as determined at 30 June 2015. The valuation was provided by a licensed valuer and includes the area that is currently leased. A second valuation was obtained, but this valuation is qualified and not considered reliable for this process.

While the transaction would have an effect on the local government’s reported financial position, it would not have an immediate net effect on the local government’s finances or operations. The reason being is the title is heavily restricted and the local government has no intention of selling the site, aside the proposal currently being considered. As the local government acquired the land for nominal consideration, no loss would be incurred if the site was disposed of for nominal consideration.

The long term financial impact is more difficult to ascertain. It is not clear if the asset would sell on an open market (or via a tender) process for the exact amount calculated in the fair value consideration as a number of level 3 inputs were used in the calculation of this value. It is also not clear if any value could be attributed to the land if it were to be developed either by the local government or in some form of joint venture.

4. The effect of the proposed transaction on matters referred to in the local government’s current plan prepared under section 5.56 (Strategic Community Plan and Corporate Business Plan).

Within Priority Area 4 of the Town of Cottesloe’s Strategic Community Plan, strategy 4.3 states:

“Consider undeveloped Government owned land for higher density development, provided there is both public support and benefit for the Cottesloe community”.

There are two projects/actions listed in the Corporate Business Plan for this strategy which relate to the disposition in question, being;

- c. “Create structure plans and impact assessments for high priority land or development zones in partnership with the State Government” and

- d. “Lobby and negotiate with relevant partners, such as the Department of Lands and LandCorp to instigate development in identified priority areas”.

As the land in question is zoned “development zone” and is capable of supporting higher density development, given its location to major transport infrastructure and other such factors, it would be considered high priority for such development.

If the disposition of the land proceeds as requested, conditions should be placed on the transfer, similar to a recent disposition of land (former depot site) which requires development to be undertaken in a specified way and timeframe, if the disposition is approved.

The impact of disposing of the land prior to development occurring is not able to be determined at this stage. The cost and complexity of scoping and pricing any development on the site has prohibited consideration of this option. However, given the location and size of the land parcel, it is likely that it could be developed to satisfy the strategic objectives, either by the disposition with conditions or being developed by the local governments.

5. The ability of the local government to manage the undertaking or the performance of the transaction; and

As the proposed disposition is a straight forward disposition of land (subject to Minister’s Approval) there are no foreseeable impediments to the local government undertaking the transaction.

6. Any other matter prescribed within the Regulations as required.

At the time of preparation, no other matters were raised within the Regulations.

PART B – LEASE THE FACILITY TO CURTIN CARE FOR NOMINAL CONSIDERATION FOR A PERIOD OF 99 YEARS

As required by the *Local Government Act 1995* (section 3.59) the following are listed as factors for consideration in this business case;

1. The effect of the proposed transaction on the provision of facilities and services by the local government

At present, the local government neither expends any funds on the site in question, nor derives any meaningful income. As such, the net effect of the disposition on the current services and facilities provided by the local government is immaterial.

However, due to the value of the land in question, it could be seen that future incomes could be enhanced by a successful development on the site for the provision of aged services. If such a development could be undertaken, it is probable that a return would be available to the local government, which could offset the cost of providing services and facilities. The actual value of any future return is difficult to calculate due to a high number of variables in such a proposal.

2. The effect of the proposed transaction on the persons providing facilities and services within the district

As with point 1, the local government does not derive any funds or benefits from the land in its current form – hence, aside the current tenant, there is no material impact from the disposition of the land holding in its current form. However, any future development capable of providing a return to the local government could allow the subsidy of services or facilities within the local government.

With respect to the applicant, who does provide services in the field of aged accommodation and care, the current lease with them is restrictive in two ways, both as a result of the term of the lease. The first way in which the current arrangements are restrictive is the inability to provide long term security to aged care tenants. Secondly, the current term prevents further expansion or investment in the site. The proposed transaction would have a positive impact on those services by providing long term security over of tenure.

3. The effect of the proposed transaction on the financial position of the local government

The exact impact of the proposed transaction on the local government is difficult to determine – due to two factors. The first is the ambiguity around any future or possible disposition of the site. The restrictions on title require that any disposition needs to be approved by the Minister for Lands – which does create some uncertainty. It is also not clear what cost would be involved in having such restrictions lifted, as mechanisms do exist to allow the restrictions to be lifted at discounted values.

The second area of ambiguity is in uses for which the site it allowed. The Certificate of Title for the conditional tenure does provide that the land is only to be used for “the provision of care, accommodation and residential facilities for aged persons and all activities and matters relating to the provision of such care, accommodation and residential facilities”. Letters from the relevant department also state that this includes the provision of a facility under the *Retirement Villages Act 1992*.

Currently, the local government has a value attached to the site of \$7,893,750 being it’s 25% share of the “fair value” as determined at 30 June 2015. The valuation was provided by a licensed valuer and includes the area that is currently leased. A second valuation was obtained, but this valuation is qualified and not considered reliable for this process.

While the leasing of the land for a period of 99 years would not see the asset removed from the balance sheet, it would quite likely be treated differently in future years due to the soon to be imposed accounting standards for leases. Under the proposed arrangements, long term leases would need to be reflected in the Statement of Financial Position of the local government at a reduced value, reflecting the transfer of ownership rights for the term of the lease.

The leasing of the whole parcel of land under the current terms of the lease would also prevent the local government from receiving any benefit from any future ventures. If the land were developed and began generating a return for the lessee, the local government would have no claim, beyond the \$1 per year it currently receives in rent. While conceivably the owners as lessors would be able to withhold any permission for development as well, it would require a renegotiation of the lease (and a fresh disposition) for any additional rent to be paid.

A long term lease would prevent the current occupant from being able to undertake a mortgage against the asset, or being able to dispose of the asset at a later date, as it would still be owned by the local government. In this sense, it represents a lower risk alternative than disposing of the interest outright.

4. The effect of the proposed transaction on matters referred to in the local government’s current plan prepared under section 5.56 (Strategic Community Plan and Corporate Business Plan).

Within Priority Area 4 of the Town of Cottesloe’s Strategic Community Plan, strategy 4.3 states:

“Consider undeveloped Government owned land for higher density development, provided there is both public support and benefit for the Cottesloe community”.

There are two projects/actions listed in the Corporate Business Plan for this strategy which relate to the disposition in question, being;

- c. “Create structure plans and impact assessments for high priority land or development zones in partnership with the State Government” and
- d. “Lobby and negotiate with relevant partners, such as the Department of Lands and LandCorp to instigate development in identified priority areas”.

As the land in question is zoned “development zone” and is capable of supporting higher density development, given its location to major transport infrastructure and other such factors, it would be considered high priority for such development.

If the parcel is leased for a period of 99 years on the same conditions as within the current lease, the lessor would require the lessee’s written approval before any alterations would occur. It is not clear what would be considered reasonable approval as the lessor is required to act in a reasonable manner when considering such amendments. As previously stated, leasing of the entire parcel would prevent the local government from developing the land further, only the lessee would be able to develop the land with the lessor’s approval.

5. The ability of the local government to manage the undertaking or the performance of the transaction; and

As the proposed disposition is a 99 year lease on similar terms and conditions as the current lease, there are not material reasons that the local government wouldn’t be able to complete the transaction, save that the arrangements would require the consent of the Minister for Lands.

6. Any other matter prescribed within the Regulations as required.

Nil

Submissions

People wishing to provide a submission or feedback should do so in writing and address the submission or feedback to PO Box 606, Cottesloe WA 6911 or email to council@cottesloe.wa.gov.au.