

6.2: DEVELOPMENT OF MIDDLETON BEACH RESERVE 26149 (IN THE AREA FORMERLY KNOWN AS CALAMARIS) AND CITY OF ALBANY CONTRIBUTION TOWARDS DEVELOPMENT

This Report has a Confidential Attachment, which discloses Commercial-in-Confidence information regarding a commercial lease of the City of Albany, and the business affairs of third parties.

File Number (Name of Ward) : PRO070 Frederickstown Ward
Previous Reference : SCM 06/12/2011 Item 6.1
Attachment : Confidential Memo to Jon and Kate Marwick from H & H dated 13 April 2012
Responsible Officer : Chief Executive Officer (F James)

IN BRIEF

- On 9 December 2011, Jonathon Sylvester Marwick and Kate Patricia Marwick as Trustees for the Marwick Family Trust (the Lessee) leased, for 21 years, the City of Albany property at Middleton Beach Reserve, formerly known as Calamaris, Lot 651 on Deposited Plan 191343 and the whole of land contained in Certificate of Title Volume LR3119 Folio 892.
- The Lessee wishes to expand and improve the property. The Lessee's architect and builder have liaised with City of Albany Officers regarding the plans for the proposed redevelopment, including anticipated costs.
- The Lessee seeks financial contribution from the City of Albany for that redevelopment, given the property is owned by the City and some of the redevelopment extends into City of Albany Reserve.
- Before the Lessee proceeds further with this the development, the Lessee requires surety from the Council regarding what, if any, financial contribution the City of Albany will make towards the development.

ITEM 6.2: MOTION BY COUNCILLOR BOSTOCK

MOVED: COUNCILLOR BOSTOCK

THAT this item lay on the table for a period of one month for further consideration by Council.

**MOTION LAPSED
NO SECONDER.**

ITEM 6.2: RESOLUTION 2**VOTING REQUIREMENT: ABSOLUTE MAJORITY****MOVED: COUNCILLOR STOCKS****SECONDED: COUNCILLOR DUFTY****THAT:**

1. Council agree to pay the contribution amount through abatement of monthly lease rental payments owed by the lessee to the City of Albany for lease of the property owned by the City and formerly known as Calamaris, until the contribution amount is totally accounted for.
2. Council agree to waive the development application fee of \$1600.00, applicable to the development, once submitted by the lessee.
3. The lessee is to provide a bank guarantee or similar financial instrument to the satisfaction of the City, to indemnify the City of Albany in respect of the satisfactory completion of the proposed works.

**CARRIED 10-1
ABSOLUTE MAJORITY****Record of Vote**

Against the Motion: Councillor Attwell

BACKGROUND

1. The Lessee of the City of Albany property formerly known as Calamaris, leased the property in December 2011, at a rate of \$5,666.66 per month (ex GST).
2. When entering the lease, the Lessee intended to undertake some renovations to the property in February / March 2012, to make it more amenable for customer service, and to meet environmental health and disability access standards.
3. It is noted that the City was responsible for undertaking the environmental health works in the food preparation and service areas of the building to comply with the *Health Act 1911*. This work has been costed at \$40,000 plus one month's rent abatement, (due to business closure), with total costs being \$45,666.66 plus GST. It is a provision of the lease that the Lessee agreed to close the Leased Premises and temporarily cease business for a period of four weeks to allow the City to complete the works.
4. While undertaking the design work for those renovations, the design became more expansive than originally intended by the Lessee, as the Lessee saw opportunity to considerably improve the amenity, customer service facilities, and provide other benefits through a more expanded redevelopment, with benefits accruing to both the Lessee and the City of Albany, as property owner.
5. The Lessee, in engaging architects and a builder, have developed a design for the property, and costed that work.
6. The Lessee has worked constructively with City Officers in development of that design (in preparation for development application submission), and discussed with City Officers the reasonableness of the proposed costs for that work.

DISCUSSION

7. The Lessee seeks a financial contribution from the City of Albany, towards some of the development works, given the development:
 - a. will improve amenity in the Middleton Beach Reserve generally,
 - b. will improve the property specifically, owned by the City,
 - c. some of the works proposed extends into City of Albany Reserve, and will be available for general public use.
8. The Lessee proposes that any financial contribution by the City be in the form of rent abatement. That is, the City waive rent collection each month, in exchange for payment of the development works that the City contributes towards, until the total amount of those City-contributed development costs are repaid to the Lessee.
9. The Lessee has committed to meeting all costs associated with the required Deed of Variation of Lease, which will be subject to Council consideration and endorsement at the next available Council meeting.
10. The Lessee and their architect presented the development design to the Council's Planning and Development Committee on 24 April 2012. At that meeting the members agreed that the proposed development would be beneficial to the City of Albany.
11. The Lessee advised that Committee that it did not wish to proceed with incurring further costs regarding the development, until it has some surety from the Council regarding if it will make financial contribution towards the proposed development.
12. Members of the Planning and Development Committee requested the CEO to present the matter to the Council's Audit and Finance Committee, for its urgent consideration regarding financial implications.

STATUTORY IMPLICATIONS

13. Nil

GOVERNMENT CONSULTATION

14. Nil

PUBLIC CONSULTATION

15. Nil

STRATEGIC IMPLICATIONS

16. This proposed development aligns with the City of Albany's Strategic Plan 2011 - 2021, specifically Key Focus Areas: Lifestyle and Environment and Sustainability and Development
- *The development aligns with proposed Strategies of: redevelop areas ... to be more aesthetically pleasing*
 - *incorporate "meeting space" and recreational infrastructure in public space for young people*
 - *encourage an increase in Albany's industry base to ensure employment.*
 - *Improve and expand tourism infrastructure and attractions*
 - *encourage diversity in tourism product*
 - *flexibility of development in key tourism areas*

POLICY IMPLICATIONS

17. Nil

RISK IDENTIFICATION AND MITIGATION

18. The risk identification and categorisation relies on the City's Risk Management Framework.

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<i>Development of Middleton Beach not proceeds, and the area continues to operate under its full potential, including having poor tourism amenity facilities</i>	<i>Possible</i>	<i>Moderate</i>	<i>Medium</i>	<i>Council endorse financial contribution to development of Middleton Beach, which for this matter be contribution to the lessee's proposed development.</i>

FINANCIAL IMPLICATIONS

19. The Lessee has provided the confidential Attachment which sets out the financial contribution proposed by the Lessee, and the contribution sought by the Lessee from the City of Albany.
20. The costs estimates provided by the Lessee (through their architects and builder) have been assessed by City of Albany Officers, and are considered reasonable in amount. In some aspects, the costs are lower than the City of Albany would be able to undertake the work for.
21. City Officers believe the City should not contribute to the professional consultant costs incurred by the Lessee in developing the design, and submitting the development application.
22. The Council could determine to waive the development application fee of \$1600, in support of the development.

LEGAL IMPLICATIONS

23. Nil - if the development doesn't proceed, the original lease terms will continue.

ALTERNATE OPTIONS

24. Council can determine to not contribute any, or an amount less than that sought by the Lessee. It is likely if the Council does not contribute the amount sought by the Lessee, the Lessee will not proceed with the redevelopment.

SUMMARY CONCLUSION

25. The Lessee wishes to undertake redevelopment to the property owned by the City and formerly known as Calamaris, and seeks contribution from the City towards that development.
26. The development would be beneficial to the Middleton Beach area generally, and to the property owned by the City of Albany.