

**9.10 PROPOSED MAJOR LAND TRANSACTION, LEEDERVILLE**

- Attachments:**
1. **Major Land Transaction Business Plan - Confidential**
  2. **Major Land Transaction Business Plan - Appendix 1 - Confidential**
  3. **Heads of Agreement Key Terms - Confidential**
  4. **Legal Advice relating to Section 3.57 of the Local Government Act - Confidential**

**RECOMMENDATION****That Council:**

1. **APPROVES** the Major Land Transaction Business Plan at Attachment 1 and 2 for state-wide public notice as per section 3.59 of the *Local Government Act 1995*, to invite and consider submissions on the Business Plan before Council considers whether to enter into a major land transaction under sections 3.58 and 3.59 of the *Local Government Act 1995*; and
2. **AUTHORISES** the Chief Executive Officer to execute a Heads of Agreement with Hesperia Property Pty Ltd in relation to the key terms as outlined in Attachment 3, provided that the Heads of Agreement is not a binding agreement to sell or undertake any redevelopment of the land due to the City's obligations under sections 3.58 and 3.59 of the *Local Government Act 1995* that must be complied with before the City can agree to proceed with any major land transaction.

**PURPOSE OF REPORT:**

For Council to approve the Major Land Transaction Business Plan for state-wide public notice as per section 3.59 of the *Local Government Act 1995*.

For Council to authorise the Chief Executive Officer to execute a Heads of Agreement with Hesperia Property Pty Ltd.

**BACKGROUND:**Leederville Precinct Structure Plan

Leederville is identified as a Secondary Centre in accordance with the Western Australian Planning Commission's (WAPC) State Planning Policy 4.2 – Activity Centres for Perth and Peel (SPP 4.2). In accordance with SPP 4.2, the City has prepared the Leederville Precinct Structure Plan (LPSP) which will replace the Leederville Masterplan and guide future development within the locality.

Prior to being drafted, the LPSP was subject to significant research and public consultation through the 'Design Leederville' community consultation campaign in late 2019.

At its meeting on 14 September 2021, Council recommended that the WAPC approve the LPSP subject to modifications.

Under the LPSP The Avenue and Frame Court Car Parks would be zoned Mixed Use R-AC0 and are earmarked as Key Development Sites. The LPSP provides further guidance for the two landholdings as follows:

*The Avenue Car Park*

The site is situated within the Cityscape precinct, which is described as:

- A place with mixed uses that complement each other.
- The location for long-term development outcomes.
- The place where landmark development shapes the Leederville skyline.
- Designed to encourage public transport usage.
- A showcase for sustainability and reuse.
- A higher density mixed-use and residential area.
- A key contributor to the success of the Village.

This identifies an acceptable height standard of 18 storeys, which could increase to a maximum height of 23 storeys subject to bonus criteria being met.

#### *Frame Court Car Park*

The site is situated within the Urban Frame Type A precinct, which is described as:

- A mixed use area.
- Carefully designed to avoid impacts on existing neighbours.
- An attractive and safe entry point to the core of Leederville for pedestrian, cyclists and vehicles.
- Well-landscaped with lots of shade, green spaces and places to relax.

This identifies an acceptable height standard of 10 storeys, which could increase to a maximum height of 14 storeys subject to bonus criteria being met.

The LPSP is required to be approved by the WAPC before it becomes operational.

#### Redevelopment Proposals, Leederville

At its Meeting on 14 December 2021, Council approved the Chief Executive Officer to commence an expression of interest process for the redevelopment of the City's major landholdings in Leederville, being The Avenue Car Park and Frame Court Car Park.

At its Meeting on 21 June 2022, Council approved the stage one materials, including the selection criteria to be used to assess all proposals.

Eight submissions were received throughout the stage one advertising period from 27 June 2022 to 8 August 2022. The evaluation panel shortlisted three submissions who received the highest score against the selection criteria.

At its Meeting on 18 October 2022, Council endorsed the three submissions for progression to stage two of the redevelopment proposals process. At this Meeting, Council requested the Chief Executive Officer present a report to Council to determine the additional information required from the shortlisted proposals and the selection criteria to be used to determine the preferred proposal.

The draft Stage 2 Request for Further Information was workshopped with Council Members at the Council Workshop on 29 November 2022. The Stage 2 Request for Further Information was retitled Stage 2 Request for Detailed Proposals and was updated following the feedback received from Council Members.

At its Meeting on 13 December 2022, Council approved the Stage 2 Request for Detailed Proposals materials for the second stage of the redevelopment proposals process.

Shortlisted proponents were invited to submit detailed proposals from 14 December 2022 to 28 February 2023. The evaluation panel recommended that the preferred proponent's proposal (Hesperia Property Pty Ltd's) be progressed, for the following reasons:

- Compliance with the submission requirements;
- Addressed all essential, non-weighted selection criteria and key commercial terms;
- Addressed all Stage 2 Request for Detailed Proposals items; and
- Ranked highest in the evaluation panel's assessment of the qualitative selection criteria.

The evaluation panel who assessed the submissions comprised of six voting members including:

- One representative from DevelopmentWA who has significant experience in assessing submissions of a similar nature and scale;
- Two representatives from the City's Design Review Panel who have extensive design and built form expertise; and
- Three representatives from Administration who have the appropriate land, legal, planning and development knowledge and skills.

The evaluation panel was advised by an external independent probity advisor, Administration's Procurement and Contracts Officer as well as two subject matter experts from Cygnet West.

At its Meeting on 9 May 2023, Council endorsed Hesperia Property Pty Ltd as the preferred proponent and requested the Chief Executive Officer progress the development of a Heads of Agreement with Hesperia Property Pty Ltd in relation to their proposal.

At this same Meeting, Council requested the Chief Executive Officer prepare a Business Plan under section 3.59 of the *Local Government Act 1995* in relation to the major land transactions relating to Hesperia Property Pty Ltd's proposal.

The City has engaged Cygnet West to provide commercial advice, Jackson McDonald to provide legal advice and Stantons to provide independent probity advice throughout the entire process.

#### **DETAILS:**

The Major Land Transaction Business Plan (Business Plan) outlines the request for redevelopment proposals process undertaken to date and covers the following elements of the proposal as prescribed in S3.59 of the *Local Government Act*:

- expected effect on the provision of facilities and services by the local government and other persons providing facilities and services in the district;
- expected financial effect on the local government;
- expected effect on matters referred to in the local government's current plan prepared under S5.56 of the *Local Government Act*; and
- the ability of the local government to manage the undertaking or the performance of the transaction.

State-wide public notice of the Business Plan, at **Appendix 1** and **2** must be undertaken for a period of six weeks and state that the local government proposes to commence the major land transaction described in the notice.

The following methods will be used during the public notice period from 28 July to 11 September 2023:

- A copy of the business plan will be available to be inspected or obtained at the City's Administration Building.
- A copy of the business plan will be published on the City's website with an accompanying Imagine Vincent Page, inviting comments on the Business Plan.
- Public notice will be in the West Australian newspaper on Friday 28 July and Saturday 19 August, inviting comments on the Business Plan.

Hesperia Property Pty Ltd and the City have held multiple negotiation meetings to draft the Heads of Agreement. The key terms of the Heads of Agreement are outlined in **Appendix 3**.

#### **CONSULTATION/ADVERTISING:**

The results of the state-wide public notice for comment on the Business Plan will be presented to Council for consideration of whether to proceed with the major land transaction for the redevelopment of the sites.

#### **LEGAL/POLICY:**

Council is adhering to the requirements of the *Local Government Act* S3.59 which states that 'a local government is to prepare a business plan' and invite and consider public submissions on that business plan before it enters into a major land transaction.

Following the consultation, at a subsequent Council Meeting, Council would determine whether or not to proceed with the major land transaction described in the business plan.

A 'Major Land Transaction' means the acquisition, disposal (sell, lease or otherwise dispose of, whether absolutely or not) or development of land that is not exempt under the Act, and where the total value of:

- (a) The consideration under the transaction; and
- (b) Anything done by the local government for achieving the purpose of the transaction;

is more or is worth more than either \$10 million or 10 percent of the operating expenditure incurred by the local government from its municipal fund in the last completed financial year.

As part of the major land transaction Hesperia Property Pty Ltd will provide the City of Vincent with goods and certain services, including car parking, community facilities, subdivision works (including essential services, roads, footpaths, pedestrian spaces, open space and landscaping), relocation of The Avenue telecommunication tower and consultancy services in support of the Metropolitan Region Scheme Amendment proposed by the City of Vincent to remove the Primary Regional Road reservation from The Avenue land.

Section 3.57 of the *Local Government Act* provides that a local government is required to invite tenders before it enters into a contract under which another person is to supply goods or services. The City has sought legal advice on this requirement, which is included in **Attachment 4**.

After taking this advice Administration is of the view that the purpose of sections 3.58 and 3.59 is to regulate land acquisitions and disposals and developments while the purpose of section 3.57 is to regulate the acquisitions of goods and services that are unrelated to a land transaction. The goods and service being provided by Hesperia Property Pty Ltd as set out in the proposed Business Plan and Heads of Agreement are better characterised as a major land transaction and not the acquisition of goods and services. As such, Section 3.57 does not apply and the public process under sections 3.58 and 3.59 does and is being followed.

Even if it was determined that section 3.57 also needed to be complied with, Administration is of the view, after considering the attached advice, that the goods and services being provided by Hesperia Property Pty Ltd as part of this major land transaction are exempt from the tender requirements under regulation 11(2)(f) of the *Local Government (Functions and General) Regulations 1996*. This regulation provides that a tender does not have to be publicly invited if the local government has good reason to believe that, because of the unique nature of the goods or services required, or for any other reason, it is unlikely that there is more than one potential supplier. The goods and services being provided by Hesperia Property Pty Ltd are part of the larger, staged and integrated urban renewal project described in the Business Plan at **Attachments 1 and 2**, and a good or service that cannot be provided by any other supplier because:

1. the City wants to pay for the goods and services, not by way of cash, but by the transfer of a unique parcel of land so the only person who can supply the car park on that basis is the successful buyer of the unique parcel of land;
2. the City does not want to assume the construction risk of the car parking construction associated with being the principal under a large construction contract;
3. the City is protected against construction cost escalations because the completed car parking will be delivered to the City in accordance with the agreed specifications, irrespective of the cost, as part of a larger transaction;
4. the integrated nature of the development provides a unique set of goods and services to the City that allow multiple assets to be designed and operated in an integrated fashion while delivering the City's most preferred urban renewal outcome for the Frame Court and the Avenue land and through a staged development securing the delivery of subsequent stages of that urban renewal outcome;
5. the City has undertaken a process to identify a buyer for the Frame Court land and the only person who can integrate the two assets is the buyer.

The above demonstrates that it is unlikely that there is more than one potential supplier of the goods and services being supplied by Hesperia Property Pty Ltd through the proposed major land transaction.

### **RISK MANAGEMENT IMPLICATIONS**

Low: It is low risk for Council to approve the Business Plan for state-wide public notice as per section 3.59 of the *Local Government Act 1995* and to authorise the Chief Executive Officer to execute a Heads of Agreement with Hesperia Property Pty Ltd.

### **STRATEGIC IMPLICATIONS:**

This is in keeping with the City's *Strategic Community Plan 2018-2028*:

#### Thriving Places

*We encourage innovation in business, social enterprise and imaginative uses of space, both public and private.*

*Our physical assets are efficiently and effectively managed and maintained.*

*Our town centres and gathering spaces are safe, easy to use and attractive places where pedestrians have priority.*

Sensitive Design

*Our built form is attractive and diverse, in line with our growing and changing community.  
Our planning framework supports quality design, sustainable urban built form and is responsive to our community and local context.*

Innovative and Accountable

*Our resources and assets are planned and managed in an efficient and sustainable manner.*

**SUSTAINABILITY IMPLICATIONS:**

This does not contribute to any specific sustainability outcomes of the *City's Sustainable Environment Strategy 2019-2024*.

**PUBLIC HEALTH IMPLICATIONS:**

This does not contribute to any specific public health outcomes in the *City's Public Health Plan 2020-2025*.

**FINANCIAL/BUDGET IMPLICATIONS:**

The financial implications of the proposal is detailed in the Business Plan.