

5.1 HAYNES STREET RESERVE DEVELOPMENT PLAN - NO. 15 HAYNES STREET, NOS. 25 AND 31 SYDNEY STREET, NORTH PERTH

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Attachments: 1. Plan of Haynes Street Reserve Land Parcels
2. Consultation Map
3. Haynes Street Reserve Development Plan (3a) Transition Plan (3b) and Landscaping Plan (3c)

RECOMMENDATION:

That Council:

1. NOTES that the current use of No. 15 (Lot 9) Haynes Street, North Perth is in breach of the Deed of Trust dated 2 October 1941 and therefore the Attorney General or the Supreme Court could require the City (as the trustee) to comply with the Deed of Trust, hold the City liable for the breach or give directions in respect to the administration of the Deed of Trust, in accordance with Section 21 of the *Charitable Trusts Act 1962*;
2. ENDORSES the draft Haynes Street Reserve Development Plan (includes proposed transition plan and proposed landscaping concept plan), included as Attachment 3, for submission to the Attorney General in accordance with Recommendation 3, and advertising for public comment **subject to** approval from the Attorney General;
3. NOTES the proposed five year transition plan at Attachment 3b for the childcare service based on the length of time children currently enrolled would require that service;
4. **AUTHORISES** the **Mayor** to apply for approval from the Attorney General for the draft Haynes Street Reserve Development Plan **including** the following information to support the Development Plan:
 - a. Acknowledgement that the City has been in breach of the Deed of Trust dated 21 October 1941 in respect to its use of No. 15 (Lot 9) Haynes Street, North Perth as a child care premises;
 - b. Confirmation that the City intends to transition the use of No. 15 (Lot 9) Haynes Street to comply with the Deed of Trust in accordance with the draft Haynes Street Reserve Development Plan included as Attachment 3;
 - c. **The following proposed terms for a future lease of No. 15 (Lot 9) Haynes Street:**
 - i. **From the commencement of the new lease, no enrolments should be taken for the site after 31 December 2025;**
 - ii. **At the end of year 2, the lessee would need to submit a satisfactory relocation plan or business plan which shows a transition from the site or how they will scale down the current operations by the end of year 5. If this is considered to be sufficient, the 2 year option period may be considered by the City; and**
 - iii. **At the end of year 4, the City would require a closure plan which demonstrates the timeline of closure and removal of buildings and property from the site. If this is considered to be sufficient, an additional 1 year lease may be considered by the City;**
 - d. The City's commitment that **past** revenue to the value of **\$134,241.13** obtained from the use of No. 15 (Lot 9) Haynes Street, **since the 2015/16 financial year**, will be used to

return No. 15 (Lot 9) Haynes Street to public open space in accordance with the timeframe of the draft Haynes Street Reserve Development Plan;

- e. **The City's commitment that all additional revenue obtained from the use of No. 15 (Lot 9) Haynes Street will be used to return No. 15 (Lot 9) Haynes Street to public open space in accordance with the timeframe of the draft Haynes Street Reserve Development Plan;**
- f. **The City's commitment to convert No. 31 (Lot 100) Sydney Street into public open space in accordance with the timeframe of the draft Haynes Street Reserve Development Plan;**
- g. **Any additional information requested by the Attorney General or the Department of Justice; and**

5. NOTES:

- a. **The outcomes of preliminary consultation on the use of Haynes Street Reserve;**
- b. **The timeframes proposed in the draft Haynes Street Reserve Development Plan and any subsequent leases for No. 15 (Lot 9) Haynes Street, North Perth would be subject to approval by the Attorney General and public notice pursuant to Section 3.58 of the *Local Government Act 1995*;**
- c. **If the Attorney General makes modifications or does not approve the Transition Plan, this decision will be presented to Council; and**
- d. **If the Attorney General approves the draft Haynes Street Reserve Development Plan included in Attachment 3, the following process would be followed:**
 - i. **The draft Haynes Street Reserve Development Plan will be advertised for public comment; and**
 - ii. **Administration will present a report to Council outlining the results of consultation and making a recommendation regarding whether to proceed with the draft Haynes Street Reserve Development Plan.**

PURPOSE OF REPORT:

For Council to consider:

- The submissions received during preliminary consultation on the draft Haynes Street Reserve Development Plan (Development Plan);
- Endorsing the draft Development Plan;
- Seeking approval for the draft Development Plan from the Attorney General; and
- Subject to the approval of the Development Plan by the Attorney General, advertising it for public comment.

BACKGROUND:

The City owns No. 15 (Lot 9) Haynes Street, and No. 25 (Lot 93) and No. 31 (Lot 100) Sydney Street, North Perth (Haynes Street Reserve) in freehold. A plan of the site is included as **Attachment 1**. Haynes Street Reserve is currently used for the purpose of a child care centre, a playgroup, a dental health clinic and a car park, subject to the following leases and licenses.

Lot	Lessee/Licensee	Expiry
9	Kidz Galore Pty Ltd (Kids Galore) (Child Care)	31 December 2020
	North Perth Playgroup Inc (Portion)	30 June 2021
100	North Perth Playgroup Inc (Portion)	30 June 2021
	Department of Health (Dental Health Services)	30 June 2021
93	Kidz Galore Pty Ltd (Car Park Licence)	30 June 2021
	Department of Health (Dental Health Services) (Car Park Licence)	30 June 2021

Kidz Galore has leased No. 15 (Lot 9) Haynes Street from the City of Vincent since 2004. Kidz Galore contacted the City in 2016 requesting to purchase No. 15 (Lot 9) Haynes Street to gain certainty on their use of the site into the future. At this time, it was discovered that No. 15 (Lot 9) Haynes Street was subject to a Deed of Trust which provides that the land is to be used for public recreation. In addition, the City's Public Open Space Strategy, adopted by Council in December 2018, identifies a lack of local public open space in the North Perth area. Following discussions with Kidz Galore over the implications of the Deed of Trust and the Public Open Space Strategy, Kidz Galore submitted a further proposal to purchase a modified portion of the site in April 2019.

Council considered this offer and declined the proposal at the Council Meeting on 28 May 2019 (Item 11.7) on the basis that the land is encumbered by a Deed of Trust which provides that the land is to be used for the purpose of public recreation and a commercial child care centre is inconsistent with this purpose. Council also resolved that it did not support varying the Deed of Trust to remove Lot 9 on the basis that the land is not considered to be in excess to the City's public recreation requirements and because it was not considered "impossible, impractical or inexpedient" for the land to remain subject to the trust.

Also as part of this decision Council requested that the Chief Executive Officer prepare a Development Plan identifying the type and size of public open space suitable for the site and the level of amenities required.

The City has now undertaken preliminary consultation on the Haynes Street Reserve Development Plan to understand community views on the size of public open space and level of amenities required, in accordance with Council's decision. Consultation was undertaken between 23 October 2019 and 10 November 2019 and included the following methods and engagement:

Consultation Method	Engagement
Letter to owners and occupiers within the area shown on Attachment 2	837 letters sent
Display on the City's Imagine Vincent website	1022 page visits
Online survey	179 submissions
Social media posts	4 posts 13,500 total reach 1154 clicks/actions
Information session at Kidz Galore childcare for parents of children at the childcare centre on 6 November 2019	Approximately 100-150 attendees
Community Workshop at North Perth Town Hall on 7 November 2019	Approximately 40 attendees

DETAILS:

1. Consultation Results

A summary of the key results from the consultation and key matters raised are outlined below.

The consultation included a survey with 179 submissions.

The survey indicated that **50 percent (89 submitters)** supported No. 15 (Lot 9) Haynes Street being used as public open space, in particular a place that allowed all ages to play. As Hobart Street Reserve which caters to young children under 4 years old is within close proximity, a priority for the play infrastructure at Haynes Street Reserve was to cater to all ages. Low scale lighting was encouraged as part of the design to promote community safety. There was also a focus on ensuring that landscape design focused on nature and greenery, with attention given to utilising the mature Camphor Laurel trees along Haynes Street and introducing nature play elements.

The consultation also indicated that 44 percent (**78 submitters**) supported the childcare to be maintained on No. 15 (Lot 9) Haynes Street. While the results demonstrated the important role that the services play on the site, there was also commentary related to these responses that revealed a misunderstanding of the implications of the existing Deed of Trust or that they disagreed with the City's opinion on the permanency of the Deed of Trust.

For the adjacent lots at No. 25 (Lot 93) and No. 31 (Lot 100) the results indicated that **60 percent (107 submitters)** supported community services such as child related or the existing services to occupy the site. Through the commentary related to these responses, there was support for Kidz Galore Pty Ltd to relocate to this site if removed from No. 15 (Lot 9) Haynes Street. Results indicated that 36 percent (**64 submitters**)

supported full or partial conversion to public open space. Consideration was given to this option where No. 25 (Lot 93) and No. 31 (Lot 100) were leased in accordance with Section 3.58 of the *Local Government Act 1995*. The City considered this option however determined that this option may result in a more constrained and inaccessible open space if only No. 15 (Lot 9) Haynes Street were to be developed as a park. In addition, the City would be required to comply with the land disposition process set out in the *Local Government Act 1995* and as part of this would need to advertise future lease or sale arrangement such that the current leasee's would not be guaranteed tenure. Development on the site would also require relevant development and building approval which would also be subject to separate approval and would not be guaranteed.

A petition containing 90 signatures was also received on 4 November 2019 from residents of North Perth, advocating for all of the Haynes Street Reserve to be returned to open space and for all non-recreational uses to come to an end. Whilst the petition does not meet the specific requirements and was not able to be presented to Council for formal acceptance and action, it was determined that the signatures would form part of the community consultation and the petition was accepted as a submission. The petition specifically opposed any commercial or residential development on this site. These submissions were considered separately and in addition to the responses to the survey as the subject of the petition did not cover the same questions as the survey.

In relation to the entire site, there were concerns relating to parking for both commercial use or for public open space. There was also concern for the current traffic volume and potential for increase, specifically around safety in accessing the site as either commercial or public open space. These concerns, whilst relevant to the development plan's design, will also be investigated through traffic counts and monitoring of parking issues.

2. Other Considerations

While the community consultation has informed the draft Development Plan there are also four other matters that have been considered. A summary of these matters is included below.

2.1 Deed of Trust

No. 15 (Lot 9) Haynes Street is encumbered by a Registrar's Caveat which secures the terms of a Deed of Trust dated 21 October 1941. The Deed of Trust provides that No. 15 (Lot 9) Haynes Street is to be used for the purpose of public recreation. To vary the Deed of Trust to remove No. 15 (Lot 9) Haynes Street (which would mean the Lot could be used at the City's discretion), the City would need to show that it is "impossible, impracticable or inexpedient to carry out the purpose of the Trust", in accordance with section 7(1)(a) of the *Charitable Trust Act 1962*.

At the 28 May 2019 OMC Council resolved that the Deed of Trust should not be varied to remove No. 15 (Lot 9) Haynes Street since:

- The land is not considered to be in excess to the City's public recreation requirements, as informed by the open space analysis set out in the City's Public Open Space Strategy; and
- It would not be "impossible, impractical or inexpedient" for the land to remain subject to the trust.

Council also noted that the City is currently in breach of the Deed of Trust due to the current childcare use of No. 15 (Lot 9) Haynes Street. Administration does not recommend that any further breach of the Deed of Trust continues, except with the approval of the Attorney General or the Supreme Court, as appropriate. In accordance with Section 21 of the Act the Attorney General or the Supreme Court may make an order requiring the City (as the trustee) to comply with the Deed of Trust, hold the City liable for the breach or give directions in respect to the administration of the Deed of Trust. In accordance with Section 20(3) of the Act the City must provide all necessary information to the Attorney General or officer undertaking the examination of the Trust under Section 20(1). Non-compliance with Section 20(3) may result in the City being liable on summary conviction to a fine not exceeding \$5,000.

In light of the above provisions and Council's 28 May 2019 resolution, the City has provided the State Solicitor's Office with details of the City's non-compliance with the Deed of Trust and has sought preliminary feedback on how the City may transition the site to being compliant.

2.2 Legal

The current lease provides the City with the power to allow Kidz Galore to remain in possession of the premises beyond the expiry, as a monthly tenant, with the approval of the Council. The holding over provision is at page 2 of Kidz Galore's lease dated 31 March 2005 and provides that:

"If the Lessee remains in possession of premises with the lessor's consent after the expiry of the term, it remains as a monthly tenant at the rental then payable, but otherwise upon the same terms and conditions applying immediately before expiry of the term, except that any option to extend the term is excluded. The monthly tenancy may be terminated by one month's notice by either party given to the other party at any time."

In order for the City to grant Kidz Galore certainty in tenure beyond 31 December 2020, a new lease would need to be granted. A new lease would need to be approved by Council and granted in accordance with Section 3.58 of the *Local Government Act 1995*. In granting the new lease, Council would need to consider the proposed use of the land and its non-compliance with the Deed of Trust. Granting a new lease to Kidz Galore would continue the current breach of the Deed of Trust.

2.3 Public Open Space (POS) Strategy 2018

The City's POS Strategy identified gaps in local open space provision in North Perth and includes the below key points relevant to the consideration of the Haynes Street Reserve:

- Haynes Street Reserve is the appropriate size for a local open space;
- Any future leases and licences should closely consider community needs and gaps in the POS network;
- An opportunity to provide public open space in North Perth will have wide health, social and environmental benefits in the short and long term;
- Since the City's residential areas are mostly built out, the City has investigated and undertaken innovative ways to create public open space including converting road reserves, sump to park projects and shared use agreements with schools across Vincent;
- If no additional POS is provided the City will see a gradual decline in provision per head of population as the population growth continues;
- The key actions from the POS Strategy include:
 - Repurpose City owned or controlled land as POS in strategic locations where gaps have been identified within the network.
 - Initiate a POS development and land acquisition reserve fund.
 - Assess the effectiveness of converting road reserves (or part of) to POS, and identify further opportunities in strategic locations where gaps have been identified within the network.

2.4 Current Lease Arrangements

The City has been in close contact with current leaseholders during this process.

Kidz Galore Pty Ltd has indicated it would prefer to stay on the current site beyond the expiry of its current lease. North Perth Playgroup Inc. has not indicated its desire to extend its lease due to low attendance. The Department of Health were advised of the Development Plan and indicated they would source an alternate venue upon expiry of the lease. The Department of Health were asked to provide input on the Development Plan and meet with the project team but did not take up this offer.

3. **Draft Development Plan**

The City has considered all of the submissions, workshops, petitions, technical considerations, legal and governance obligations, and financial implications to develop the draft Haynes Street Reserve Development Plan, included as **Attachment 3**. The proposed Development Plan's ultimate outcome is to achieve full conversion of No. 15 (Lot 9) Haynes Street and No. 31 (Lot 100) Sydney Street to public open space, and conversion of No. 25 (Lot 93) Sydney Street to a residential land use. The City acknowledges that it will take a number of years to achieve this longer term outcome so the Development Plan includes a draft Transition Plan which demonstrates how the City proposes to transition the current uses on the site and achieve the Development Plan's ultimate outcome.

No. 15 (Lot 9) Haynes Street and No. 31 (Lot 100) Sydney Street are proposed to contain the amenities suitable for the site as determined in the City's POS Strategy. This includes grassed areas, paths, bins,

seating, lighting, natural shade, place space amenities and irrigation. The community consultation results were also reflected in the design through an incorporation of nature play elements and for the design to cater to all ages. The landscape design also focuses on nature and greenery, with native plantings, retention of mature trees and encouraging wildlife. The landscape plan is also included in **Attachment 3**, forming part of the Development Plan.

No. 25 (Lot 93) Sydney Street is proposed to be converted to Residential following the conversion of the park. It is recommended that this property be developed to a vacant residential standard and sold to offset the cost to develop the park. This disposal would be subject to a separate Council decision and the requirements of the *Local Government Act 1995*.

4. Transition Plan

The priority through this project is to create public open space while acknowledging the important role of the current services on the site and transitioning them from the location over a period of time.

The City is seeking permission from the Attorney General to enact a Transition Plan that moves the childcare service off the site by 31 December 2025 (5 years) and therefore bring the use of the land in compliance with the Deed of Trust.

The rationale for the transition period is based on the maximum length of time those children currently enrolled could require that service. Kidz Galore will be required to advise all users of the Transition Plan, meaning that new enrolments would be aware of the lease ending, with no opportunity for further extension.

Further conditions and matters relating to the Transition Plan are detailed below.

4.1 Lessee Conditions

Further strict conditions are proposed to be applied to ensure that the lessee actively seeks out an alternative location to operate, as follows:

It will be recommended to the Attorney General that a 2 year lease is offered with an additional 2 year and 1 year options to extend to 5 years in total. In order for the lessee to be eligible for these options, they would be required to demonstrate that they are actively transitioning off the site. The following information would be requested in order for the lessee to exercise the option terms.

- From the commencement of the new lease, no enrolments should be taken for the site after 31 December 2025.
- At the end of year 2, the lessee would need to submit a satisfactory relocation plan or business plan which shows a transition from the site or how they will scale down the current operations by the end of year 5. If this is considered to be sufficient, the 2 year option period may be considered by the City.
- At the end of year 4 the City would require a closure plan which demonstrates the timeline of closure and removal of buildings and property from the site. If this is considered to be sufficient, an additional 1 year lease may be considered by the City.

These lease options would ensure that the lessee is working towards their transition off the site as well as demonstrating to the community that the Council is committed to returning the site to public open space.

The rent and other lease terms will be negotiated with the lessee and provided to Council for approval prior to the provision of public notice. Council would approve the proposed terms and the City will need to consider all comments received via the public notice.

4.2 City Commitments

The City is proposing to use any future lease revenue from 31 December 2020 to return the land to public open space upon the expiry of the lease.

4.3 No. 31 (Lot 100) Sydney Street, North Perth

The City is also proposing to incorporate the neighbouring property at No. 31 (Lot 100) Sydney Street into the public open space. This property is currently leased to the Department of Health (Dental Health Services) until 30 June 2021.

As part of the development plan, it was identified that the priority and long-term use of this land should be public open space. With both No. 15 (Lot 9) Haynes Street and No. 31 (Lot 100) Sydney Street, North Perth converted to public open space, there would be a greater benefit to the surrounding community than a standalone corner lot. As there is no intention for the current leaseholder to remain on the site past their current lease, the intention is to demolish the existing building and convert to a public open space as soon as practicable.

This could provide 1,367 square metres of public open space in the 2021/2022 financial year in advance of the 5 year transition for No. 15 (Lot 9) Haynes Street. No. 15 (Lot 9) Haynes Street would provide an additional 2,026 square metres of public open space, totalling 3,393 square metres of public open space.

It is intended that this initial conversion of public open space at No. 31 (Lot 100) Sydney Street, North Perth will provide a level of commitment as to the City's overall goal for the site, which is to bring the subject land back into compliance with the Deed of Trust.

CONSULTATION/ADVERTISING:

If Council and the Attorney General approve the proposed Development Plan, the City will advertise it publicly for 28 days in accordance with the City's Policy No. 4.1.5 – Community Consultation Appendix 2 through the following means:

- Mail out to owners and occupiers within the area shown in **Attachment 2**.
- Display on the City's Imagine Vincent website;
- Posts on the City's social media pages; and
- Advertisement in a local newspaper.

LEGAL/POLICY:

- *Local Government Act 1995*;
- *Charitable Trusts Act 1962*;
- Policy No. 4.1.5 – Community Consultation; and
- Public Open Space Strategy.

RISK MANAGEMENT IMPLICATIONS:

Low: It is considered low risk for Council to endorse a draft Development Plan and refer it to the Attorney General for approval prior to advertising for public comment.

STRATEGIC IMPLICATIONS:

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

Enhanced Environment

*Our parks and reserves are maintained, enhanced and well utilised.
Our urban forest/canopy is maintained and increased.*

Innovative and Accountable

*We are open and accountable to an engaged community.
Our resources and assets are planned and managed in an efficient and sustainable manner.*

SUSTAINABILITY IMPLICATIONS:

Nil.

FINANCIAL/BUDGET IMPLICATIONS:

The costs associated with seeking approval from the Attorney General and consultation costs of advertising will be met through the existing operation budget.

The City has considered the below financial considerations in preparing the draft Development Plan:

- Since the City became aware of the Deed of Trust in 2016, it has received \$134,241.13 from Kidz Galore and North Perth Playgroup.
- Loss of lease and licence fees of current users of the site if leases are not continued:

Lot	Lessee/Licensee	Expiry	Lease/Licence Fee
9	Kidz Galore Pty Ltd (Child care)	31 December 2020	\$30,210.38
	North Perth Playgroup Inc (portion)	30 June 2021	
100	North Perth Playgroup Inc (portion)	30 June 2021	\$967.48
	Department of Health (Dental Health Services)	30 June 2021	\$14,501.48
93	Kidz Galore Pty Ltd (car park licence)	30 June 2021	\$2,573.10
	Department of Health (Dental Health Services) (car park licence)	30 June 2021	\$3,614.79

- Future revenue from No. 15 (Lot 9) Haynes Street under the proposed Transition Plan will be used to return the land to public open space upon expiry of the lease. This lease fee will be negotiated with the lessee and subject to approval of Council.
- Based on current lease fees of \$30,210.38 per annum, over 5 years of the proposed Transition Plan, the total fees would equate to approximately \$150,000.

Lease term	Potential lease revenue based on current rate
Initial 2 years	\$60,420.76
2 year option	\$60,420.76
1 year option	\$30,210.38
Total	\$151,051.90

- A market rate assessment and lease fee negotiation will occur as part of the preparation of a future lease.
- Demolition of buildings is approximately \$50,000 per building, with exception to the demountable building on No. 15 (Lot 9) Haynes Street which would be removed by Kidz Galore.
- Opportunity cost of removing buildings may inhibit marketability of the site for commercial lease purposes in future.
- The cost to establish public open space and required amenities is estimated to be from \$250,000 to \$320,000 including landscaping treatments to the verge. There will also be ongoing maintenance costs, varying depending on the amenities provided in the reserve.
- The potential sale of No. 25 (Lot 93) Sydney Street, which could fund the construction of the park. The 561 square metres property was given a market value by Landgate of \$785,000 on 9 April 2019. Due to the shape, size and location of No. 25 (Lot 93) Sydney Street, it could be considered the most appropriate for disposal without affecting the overall amenity or function of POS on adjoining lots. The lot would likely be sold as is to be used for residential purposes and this would be subject to a future Council decision.

Any further financial implications of the draft Development Plan, including the Transition Plan and landscape plan, will be further confirmed following consultation and as part of final consideration of the Development Plan and normal budget process.

COMMENTS:

The draft Development Plan provides for future public open space in the North Perth area, while acknowledging the important role of the current services by transitioning them from the site over a period of time.

Given that this proposal is not consistent with the existing Deed of Trust over No. 15 (Lot 9) Haynes Street, the City must first seek the approval from the Attorney General. Following the Attorney General's consideration, the City would publicly advertise the proposal for comment, before a final decision of Council is made. If this process was not successful or revisions made, a revised Development Plan would be presented back to Council.