



CITY OF BAYSWATER

Urgent Business

For the Ordinary Council Meeting

26 MARCH 2019

Item 13.1 Mertome Village – Option to Assign the Railway Lease



Mertome Village - Option to Assign the Railway Reserve Lease

Owner:	City of Bayswater	
Responsible Branch:	Financial Services	
Responsible Directorate:	Corporate and Strategy	
Authority/Discretion:	<input type="checkbox"/> Advocacy <input checked="" type="checkbox"/> Executive/Strategic <input checked="" type="checkbox"/> Legislative	<input type="checkbox"/> Review <input type="checkbox"/> Quasi-Judicial <input type="checkbox"/> Information Purposes
Voting Requirement:	ABSOLUTE MAJORITY REQUIRED	
Attachments:	N/A	
Refer:	Item 10.2.4: OCM 12.03.2019 Item 10.2.1: OCM 12.02.2019 Item 10.34: OCM 27.11.2018 Item 11.4: OCM 26.06.2018 Item 11.3: OCM 12.12.2017 Item 11.2: OCM 28.03.2017 Item 13.9: OCM 06.12.2016 Item 13.8: OCM 23.08.2016 Item 13.6: OCM 02.08.2016	

SUMMARY

For Council approval that the proposed disposition of the City's leasehold interest in Lots 402 – 406 (9 – 17) Winfred Road, Bayswater to Fresh Fields Management (Mertome Village) Pty Ltd (Fresh Fields) is an exempt disposition that is excluded from the application of s. 3.58 of the *Local Government Act 1995* (the Act) in accordance with r. 30(2) of the *Local Government (Functions and General) Regulations 1996* and to resolve to proceed with the grant of the option to Fresh Fields under the Option to Assign.

OFFICER'S RECOMMENDATION:

That Council:

- (a) resolves that the proposed disposition of the City's leasehold interest in Lots 402 – 406 on Plan 3404 on Certificate of Title Volume 2936 Folio 944 to Fresh Fields Management (Mertome Village) Pty Ltd (Fresh Fields) by granting an option to Fresh Fields to take an assignment of the lease of the Railway Reserve Land is an exempt disposition under regulation 30(2) of the *Local Government (Functions and General) Regulations 1996* and accordingly there is no requirement to prepare a local public notice of the proposed disposition pursuant to section 3.58(3) and section 3.58(4) of the *Local Government Act 1995*.
- (b) authorises the City to proceed with the grant of the option to Fresh Fields under the Option to Assign to take an assignment of the City's leasehold interest in the Railway Land.
- (c) authorises the Mayor and the Chief Executive Officer to execute the Option to Assign with Fresh Fields.

BACKGROUND

Adjoining Lot 16 (30) Winifred Road, Bayswater is a multi-lot title being Lots 402, 403, 404, 405 and 406 (9 – 17) Winifred Road, Bayswater which is owned by the State of Western Australia (Railway Reserve Land).

The Public Transport Authority of Western Australia (PTA) is noted on the certificate of title as being the responsible agency.

The Railway Reserve Land was leased from the PTA by the Shire of Bayswater Aged Persons Homes Inc. (the Incorporated Association) pursuant to a lease with a term of 50 years (Railway Land Lease). 28 units have been constructed on the Railway Reserve Land as part of a development known as Mertome Gardens and are used for social housing. The term of the Railway Land Lease expires on 31 December 2032. The 28 units constructed on the Property were funded by a grant from the Housing Authority pursuant to a joint venture agreement with the City (formerly the Shire of Bayswater Aged Persons Homes Inc) (Agreement).

On 29 October 2002, the Commissioner of Fair Trading made an order that the undertakings of the Incorporated Association be transferred to the City. The effect of this order is that the City assumed the rights and obligations of the Incorporated Association under the Railway Land Lease on and from 29 October 2002.

Council resolved the following at its Ordinary Meeting on 12 March 2019 to, inter alia, give local public notice of proposed disposal of its leasehold interest in the Railway Land to Fresh Fields and consider any submissions in accordance with s. 3.58 of the Act before it enters into the Option deed with Fresh Fields.

EXTERNAL CONSULTATION

As part of maintaining open communication, a number of meetings have been held with residents of the village over the past two years culminating in Council's resolution of 2 August 2016 to essentially pursue a long-term lease arrangement for the land and sell the business and assets situated on Lot 16, 30 Winifred Road, Bayswater held by the City of Bayswater.

Since this resolution, Council, at its meeting of 23 August 2016, endorsed the Community Engagement Plan for the Redevelopment of Mertome Village project. Information sheets have been sent to residents and 'drop in' sessions also held at the Mertome Hall as part of the commitment given to keeping residents informed. The Mertome project has also featured in a number of corporate publications and media articles.

OFFICER'S COMMENTS

The Option for Fresh Fields to take an assignment of the Railway Reserve lease

It is a term of the proposed Sale of Business Agreement that the City will grant Fresh Fields an option (exercisable at any time during the remaining term of the Railway Land Lease) to take an assignment of the City's leasehold interest in the Railway Land Lease (noting that Fresh Fields intends to incorporate the Railway Reserve Land into Mertome Village if possible).

The assignment of the City's leasehold interest to Fresh Fields pursuant to the option will be subject to the PTA and the Minister for Transport consenting to the assignment of the Railway Land Lease to Fresh Fields.

Regulation 30(1) of the *Local Government (Functions and General) Regulations 1996* (LG Regulations) provides that a disposition described in this regulation as an exempt disposition is excluded from the application of s. 3.58 of the Act.

Reg 30(2) of the LG Regulations provides as follows:

“A disposition of land is an exempt disposition if –

- a. the land is disposed of to an owner of adjoining land (in this paragraph called the transferee) and –*
 - (i) its market value is less than \$5,000; and*
 - (ii) the local government does not consider that ownership of the land would be of significant benefit to anyone other than the transferee;”*

The City has obtained a valuation report from Colliers which values the City's leasehold interest in the Railway Reserve Land at a nil value. Further, and given the City has entered into a Long-Term Lease and Business Sale Agreement with Fresh Fields for Mertome Village and these 28 units form part of that Village, it is considered that ownership of the land would not be of significant benefit to anyone other than the transferee.

Having regard to the above, the City has obtained legal advice confirming that the proposed disposition of the City's leasehold interest in the Railway Reserve Land to Fresh Fields by granting an option to Fresh Fields to take an assignment of the lease of the Railway Reserve Land is an exempt disposition under regulation 30(2) of the LG Regulations and accordingly there is no requirement to prepare a local public notice of the proposed disposition pursuant to section 3.58(3) and section 3.58(4) of the Act.

It is therefore recommended that Council resolve to proceed with the grant of the option to Fresh Fields and authorise the execution of the Option to Assign on the basis that it is an exempt disposition.

Other

Transaction documents for the long-term lease of the land and sale of business assets have been executed with Hall & Prior.

The City is in the final stages of negotiations with Juniper to terminate the Management Agreement in so far as it relates to Mertome Village. The City is acting on the advice of our legal advisors to complete this notice.

LEGISLATIVE COMPLIANCE

Section 17 of the *Retirement Villages Act 1992* states that a resident has a right to occupy his/her residential premises until:

- the resident dies; or
- the residence contract is terminated by the resident in accordance with the residence contract or under the *Retirement Villages Act 1992*; or
- the resident abandons the residential premises; or
- the residence contract is terminated by the State Administrative Tribunal (SAT); or

- the holder of the mortgage, charge or other encumbrance that was in existence before the commencement of this section becomes entitled to vacant possession of the premises in pursuance of rights conferred by the mortgage, charge or other encumbrance.

So, while a resident has a contract (which they all do), they cannot be moved out of Mertome Village without their consent, and any redevelopment needs to happen in consultation with residents.

Notwithstanding this, the Railway Reserve land (comprising Lots 402, 403, 404, 405 and 406 on Plan 3404 forming part of Mertome Gardens) has no registered memorial; the City has a leasehold interest in the Railway Reserve land. This lease with the WA Government Railways Commission ends on 31 December 2032. A Draft Railway Land Management Agreement between the City and Hall & Prior is being drafted for these units.

The *Retirement Villages Act 1992* places numerous obligations on the owner of land within a retirement village. A long-term lease will, by necessity, result in Council retaining some risk in relation to the retirement village. Appropriate risk allocation has been a guiding principle for the City in negotiations with Hall & Prior.

FINANCIAL IMPLICATIONS

An allocation of \$200,000 has been made in the 2018/19 budget for redevelopment of Mertome Village. This allocation provides for legal advisory, commercial advisory and ancillary costs of this project. Additional funds are required to complete this significant transaction and this will form part of the 2018/19 mid-year budget.

STRATEGIC IMPLICATIONS

In accordance with the City of Bayswater Strategic Community Plan 2017-2027, the following applies:

Theme:	Our Community.
Aspiration:	An active and engaged community.
Outcome C1:	A strong sense of community through the provision of quality services and facilities.

CONCLUSION

This report is submitted to Council for approval to exempt the proposed disposition of the City's leasehold interest in the Railway Reserve Land pursuant to Regulation 30(2) of the LG Regulations as part of the Mertome Village transaction process.

It is considered appropriate that Council approve this exemption and authorise the City's entry into the Option to Assign to enable positive completion of the Conditions Precedent for this transaction.