

Corporate & Strategy Reports

**Committee Consideration – 7 December 2021**

**Council Resolution – 14 December 2021**

**Table of Contents**

Item No. Page No.

[CPS20.21 Update and New Lease for Floreat Community Pre-Kindy Inc. 2](#_Toc89359533)

[CPS21.21 Non-Exclusive Licence to Jeavons Pty Ltd 11](#_Toc89359534)

[CPS22.21 List of Accounts Paid – November 2021 18](#_Toc89359535)

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| **CPS20.21 Update and New Lease for Floreat Community Pre-Kindy Inc.** |

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| **Committee** | 7 December 2021 |
| **Council** | 14 December 2021 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under *section 5.70 Local Government Act 1995*** | Nil. |
| **Director** | Ed Herne – Director Corporate & Strategy |
| **Attachments** | 1. Floreat Community Pre-Kindy Inc. - Proposal |
| **Confidential Attachments** | Nil. |

**Executive Summary**

In July 2021, Council approved an exclusive use lease of the Hackett Play Centre site to the Floreat Community Pre-Kindy Inc (‘FCPK’). As a requirement of that lease under the City’s standard terms and conditions, FCPK were responsible for obtaining all statutory approvals in order to operate.

On 16 November 2021, FCPK formally advised officers that without significant alterations to the Hackett Play Centre, the Education and Care Regulatory Unit (‘ECRU’), would not be able to issue a new approval to operate from the facility based on its current condition.

In order for the valued service which is currently being offered to the community to continue, FCPK have sought further advice from ECRU and have gained conditional approval to remain at the 25 Strickland Street site, subject to Council’s support, and also the erection of a temporary fence to ensure a greater level of child safety.

Council is now asked to consider a new lease being awarded to FCPK for the exclusive use of portion of the 25 Strickland Street site consistent with the key terms as noted within this report.

**Recommendation to Committee**

**Council:**

1. **approves an exclusive use lease for portion of the 25 Strickland Street, Mount Claremont site between the City of Nedlands and Floreat Community Pre-Kindy Inc. consistent with the key terms as noted within this report. and;**
2. **authorises the CEO and Mayor to execute the lease agreement and apply the City’s Common Seal.**

**Voting Requirement**

Simple Majority.

**Discussion/Overview**

**Background**

Cherie Lewis, (‘Business Owner’) of Annie’s Playschool (‘Annie’s’) entered into a lease agreement with the City for exclusive use of the Strickland Street Infant Health Clinic located on Strickland Street in Mount Claremont on 1 July 2014. The lease agreement expired on 30 June 2021 and the City has now invoked the ‘holding over’ provision within the lease agreement.

However, in April 2021, the three teachers employed by Annie’s (the ‘Applicants’) advised City officers that discussions had taken place over the past few months between the Business Owner and the Applicants about the Business Owner’s intent to cease her involvement with the business.

On 14 April 2021, officers had verbal confirmation of the above discussions with the Business Owner as the leaseholder, and this was later confirmed in writing on 3 May 2021.

In order for the valued service which is currently being offered to the community to continue, the Applicants created a new not-for-profit entity under the *Associations Incorporations Act 2015* called Floreat Community Pre-Kindy Inc (‘FCPK’) with the intent to operate from an alternate site owned by the City – Hackett Play Cantre.

On 27 July 2021, Council approved an exclusive use lease of the Hackett Play Centre site to the FCPK. As a requirement of that lease under the City’s standard terms and conditions, FCPK were responsible for obtaining all statutory approvals in order to operate.

Unfortunately, on 16 November 2021, FCPK formally advised officers that without significant alterations to the Hackett Play Centre, the Education and Care Regulatory Unit (‘ECRU’), would not be able to issue a new approval to operate from the facility based on its current condition.

In a final attempt to ensure valued service which is currently being offered to the community to continues, FCPK have sought further advice from ECRU and have gained conditional approval to remain at the 25 Strickland Street site, subject to Council’s support, and also the erection of a temporary fence to ensure a greater level of child safety.

**The Service**

The service currently being offered to the community by Annie’s is much valued. The service provides the community with education and care which assists young children with their transition into a formal school curriculum.

The demands of the modern school curriculum mean that parents are frequently looking for an early education service which is a beneficial alternative to long form day-care.

The learning programs offered are led by qualified and experienced primary and early learning teachers and are guided by the National Quality Framework which provides a national approach to regulation, assessment and quality improvement for early childhood education and care across Australia.

The activities offered are based upon a ‘learning through play’ philosophy which focuses on each child’s learning journey through real life experiences in nature and social interaction in a relaxed and intimate setting. The service is also unique in that it offers flexibility of days and hours.

**Strickland Street Infant Health Clinic**

As noted within the 27 July 2021 report to Council, the Strickland Street Infant Health facility is not purpose built and is considered an ageing asset. The facility is located within a parcel of land owned in freehold by the City which also includes a public playground. Although this playground is not part of the current lease area and is strictly not for ‘exclusive use’ by the tenant, it is acknowledged that the playground is used most days by the members of the playschool and the greater community.

The Department of Communities’, ECRU are the regulatory body for all education and care services under the State of WA’s *Education and Care Services National Law (WA) Act 2012* and the *Education and Care Services National Regulations 2012.* Throughout the previous lease term, the Business Owner has battled with ECRU about the site’s suitability given the non-exclusive nature of the playground area and lack of fencing which could provide exclusive use. Each year, the Business Owner was having to apply for exemptions, and this proved more and more difficult each year.

The Business Owner has on numerous occasions over the years approached officers about the possibility of exclusive use of the playground in order to satisfy ECRU requirements. This has been declined each time on the basis that the playground and park area be available to the public.

**Conditional Approval**

As noted above, in a final attempt to ensure valued service which is currently being offered to the community to continues, FCPK have sought further advice from ECRU and have gained conditional approval to remain at the 25 Strickland Street site, subject to Council’s support, and also the erection of a temporary fence to ensure a greater level of child safety.

For the benefit of the elected members, the temporary fence would mean that FCPK have the ability to utilise some outside areas, in a safe manner. In order to protect the greater public’s interest in the playground area, it has been proposed that the temporary fence run from the north to the south of the parcel, in line with the facility brickwork.

Shown below are the current lease area, along with the proposed lease area which would be sufficient to gain approval from ECRU.

Figure 1 – Current Lease Area

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Figure 2 – Proposed New Lease Area

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**Floreat Community Pre-Kindy Proposal**

As noted within the 27 July 2021 report to Council. on 4 June 2021, a formal proposal was submitted by FCPK to the City and included a detailed business plan in order to demonstrate their capacity as volunteers to operate such a service and maintain in an appropriate manner, a facility owned by the City.

An updated proposal (‘The Proposal’) has been submitted by FCPK to demonstrate the same capacity, but at the 25 Strickland Street site. The Proposal (Attachment 1) includes details of the FCPK structure, their aim for providing a valuable service to the community, their background, details about the service to be offered (including statutory obligations), projected profit and loss statements and overall, their commitment to the City and greater community should their proposal be acceptable.

**Key Terms and Special Conditions**

Consistent with the City’s ‘*Use of Council Facilities for Community Purposes*’ Policy, should Council choose to support the recommendation, solicitors engaged by the City can be asked to prepare a draft lease agreement based on the Key Terms below.

With regard to the Special Conditions as noted within the Key Terms, Officers would like to highlight two sections.

1. Works and Fitout

The Lessee would be responsible for the fitout required in order to operate. It is envisaged the only action stemming from this provision is the erection of the temporary fence. FCPK have agreed to arrange the fence, at their own cost and the removal of the fence at the expiration of the lease term will be included within the final lease document.

1. Redevelopment Clause

This clause is not something the City of Nedlands would normally include within a lease agreement. However, the inclusion of this clause solves various historical issues whereby the City was reluctant to enter into long-term arrangements based on the freehold nature of the site. The inclusion of the 12-month Redevelopment Clause within the Key Terms provides the City with flexibility should it choose to make any significant changes to the site in the future whilst also provides FCPK with a greater sense of security. FCPK have agreed to the insertion of this clause on the proviso the City cannot trigger the clause until the end of year 3 of the lease.

Given the City does not have an endorsed Land Investment Strategy, nor the dedicated resources available to investigate external investments, options to purchase other investments with higher yields have not been identified, the request by FCPK is considered reasonable.

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**Key Relevant Previous Council Decisions**

CPS14.21, 27 July 2021 – Council approved an exclusive use lease of the Hackett Play Centre site to the Floreat Community Pre-Kindy Inc

Item 16.1, 22 September 2020 – Council approved an 18-month extension on the Lease to Cherie Lewis. This extension was never executed due to a change of circumstances.

**Consultation**

Upon receiving the Proposal from FCPK, consultation was completed with the City’s internal teams to identify any risks and confirm that there are no concerns with the Proposal.

**Parks Services**

The City’s Parks Services has advised that based on the merits on what has been proposed, there are no objections as there are reduced maintenance requirements resulting in no change to staffing workloads, or budgetary implications.

**Building Maintenance**

The City’s Building Maintenance Team has advised that based on the merits on what has been proposed, there are no objections as there are no changes to maintenance requirements, staffing workloads, or budget implications to be considered.

**Planning Services**

Providing the Lessee obtain all necessary statutory approvals, Planning Services have no objections.

**Land & Property**

The City’s Coordinator Land and Property has confirmed that there is no objection to the Proposal. The inclusion of the 12-month Redevelopment Clause within the Key Terms provides the City with flexibility should it choose to make any significant changes to the site in the future. All other terms of the arrangement are consistent with the City’s ‘*Use of Council Facilities for Community Purposes*’ Policy.

**Strategic Implications**

Councils support of this recommendation will ensure a community organisation operating within the district can strengthen its capacity to meet both its own, and the community’s needs.

This aligns with the Great Governance and Civic Leadership Value within the City’s Strategic Community Plan which values quality decision making by Council and involving the community in decision making.

**Who benefits?**

The members of FCPK will benefit from this initiative. The approved change will also assist FCPK in engaging new members and continuing the services offered to the community.

**Does it involve a tolerable risk?**

There is minimal risk associated with support of this recommendation. The Proposal is compliant with all planning regulations and is consistent with historical uses of the facility and the City’s *Use of Council Facilities for Community Purposes*’ Policy.

The inclusion of the 12-month Redevelopment Clause within the Key Terms provides the City with flexibility should it choose to make any significant changes to the site in the future.

As detailed in the 27 July 2021 report to Council, by supporting this recommendation, Council will also recognise a loss of commercial rental income in 2021/22 of approximately $11,750. It is important to note that this rental income is unlikely to have been realised, given the Business Owner’s intent to terminate the lease and due to the change in business model of the proposed tenant.

The risk of losing the service to the community will be mitigated by supporting this recommendation.

**Do we have the information we need?**

Yes. All relevant information has been presented to Councillors.

**Budget/Financial Implications**

As detailed in the 27 July 2021 report to Council, support of this recommendation will result in a loss of $11,750 commercial rental income. However, this rent is unlikely to have been realised regardless, given the Business Owners intent to terminate the lease and due to the change in business model of the proposed tenant.

**Can we afford it?**

The loss of rental income is considered minimal and is not something Council can control.

**How does the option impact upon rates?**

The impact on rates would be negligible.

**Conclusion**

FCPK, in their Proposal has demonstrated that the ability to operate the playschool service and maintain an asset owned by the City.

The inclusion of the 12-month Redevelopment Clause within the Key Terms provides the City with flexibility should it choose to make any significant changes to the site in the future.

The recommendation presented to Councillors supports the continuance of an important community service that the City is at risk of losing in the very near future (due to the Business Owner advising her intent to close the business

Essentially, the service is simply being shifted from a commercial organisation to a not-for-profit organisation.

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| **CPS21.21 Non-Exclusive Licence to Jeavons Pty Ltd** |

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| **Committee** | 7 December 2021 |
| **Council** | 14 December 2021 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under *section 5.70 Local Government Act 1995*** | Nil. |
| **Director** | Ed Herne – Director Corporate & Strategy |
| **Attachments** | 1. Futuro Proposal |
| **Confidential Attachments** | Nil. |

**Executive Summary**

On 22 November 2021 the City received an application from Jeavons Pty Ltd (‘Applicant’) to erect a temporary structure on Reserve 53485.

Following a resolution of Council on 24 November 2020, Reserve 53485 was formally vested to the City for care, control and management for the purposes of ‘Public Open Space’.

The temporary structure, known as ‘The Futuro’ was a pre-fab housing experiment of the late 60’s and early 70’s that has been restored by the Applicant with the intention of providing Montario Quarter with a temporary community facility that can serve as a hub for community, social and cultural events.

In order to formalise the tenure which would allow the Applicant’s request to be progressed, Council are now asked to consider offering a Non-Exclusive Licence Agreement based on the Key Terms as noted within this report.

**Recommendation to Committee**

**Council:**

1. **approves a non-exclusive use licence for portion of Reserve 53485 between the City of Nedlands and Jeavons Pty Ltd consistent with the key terms as noted within this report. and;**
2. **subject to the Minister for Lands’ Consent, authorises the CEO and Mayor to execute the non-exclusive licence agreement and apply the City’s Common Seal.**

**Voting Requirement**

Simple Majority.

**Discussion/Overview**

**Background**

Reserve 53485 (‘Reserve’) is located on Seymour Avenue, Shenton Park and is part of the land subdivision known as Montario Quarter. Following a resolution of Council on 24 November 2020, the Reserve was formally vested to the City for care, control and management in June 2021 for the purposes of ‘Public Open Space’. A visual representation of the Reserve is shown below.

A map of a city

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In order to support the evolution of the immediate community throughout the construction phase, Jeavons Pty Ltd (‘Applicant’) has approached the City seeking permission to erect a temporary structure on the Reserve.

The temporary structure, known as ‘The Futuro’ was a pre-fab housing experiment of the late 60’s and early 70’s that has been restored by the Applicant with the intention of providing Montario Quarter with a temporary community facility that can serve as a hub for community, social and cultural events. A detailed proposal is contained within Attachment 1.

Given the Reserve is under the City’s care and control, and consistent with s3.58 of the *Local Government Act 1995*, an agreement of tenure is required to formalise the disposal of the land which the structure is to be erected upon.

**Community Benefits**

As noted on pages 3,8 and 9 of the Futuro Proposal (Attachment 1), there are various community benefits associated with the construction of this community facility. These include;

* A hub for community, social and cultural events
* Something of interest for the community that is unlike anything else in W.A.
* Events to service local residents.
* A program of activities that support the existing community including a café, yoga, family nights with music offerings, gallery exhibitions, wellness programs, open days and public talks.

**Key Terms and Special Conditions**

Should Council choose to support the recommendation, solicitors engaged by the City can be asked to prepare a Non-Exclusive Licence agreement based on the Key Terms below.

With regard to the Special Conditions as noted within the Key Terms, Officers would like to highlight the following sections.

1. **Term**

In order to obtain the exemption as described in the Statutory Implications section of this report, the Term of the Non-Exclusive Licence is required to be less than 24-months.

1. **Works and Fit-Out**

The Licensee would be responsible for all works and fit-out required in order to construct and operate the facility.

1. **Subject to Statutory Approvals being obtained**

As suggested by the Planning Services, Building Services and Health Services Teams as described in the Consultation section of this report, the Non-Exclusive Licence is subject to the Licensee being responsible for obtaining all Statutory Approvals required in order to construct and operate the facility. Should these not be obtained, the Licence would be terminated.

1. **Subject to Non-Exclusive Licence being at no-cost to Council**

The Licensee would be responsible for all costs associated with this arrangement. These include but are not limited to; Construction and Fitout of the facility, legal costs associated with preparation of the Non-Exclusive Licence, all Outgoings and Insurances.

1. **Non-Exclusive Licence Fee**

Given there are no-costs to Council associated with the arrangement and when considering point 6 below, it is proposed the annual Non-Exclusive Licence Fee payable be $1.

1. **Subject to all profits being directed to Shenton Park Dog Refuge**

As noted within the Applicants Proposal (Attachment 1), it is proposed the Non-Exclusive Licence contain clauses which ensure all profits realised by the Applicant are directed to the Shenton Park Dog Refuge.

1. **Subject to Termination Clause**

To ensure the City retains overall control of the site in the event of any issues which might arise, it is proposed the Non-Exclusive Licence contain clauses which will allow the City to terminate, at its sole discretion, the agreement, giving 60-days’ notice to the Licensee.

The Applicant has agreed to all Key Terms as described below on 25 November 2021.

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**Statutory Implications**

Section 3.58 of the *Local Government Act 1995* (‘Act’) governs how Local Governments can dispose of property.

Given the Reserve is under the City’s care and control, consistent with s3.58 of the Act, an agreement of tenure is required to formalise the disposal of the land which the structure is to be erected upon. This will be the Non-Exclusive Licence Agreement.

As the Applicant is a commercial entity, in certain circumstances, there may be additional advertising and market valuation requirements that need to be undertaken. In this instance there is an exemption available under s30(2)(e) of the *Local Government (Functions and General) Regulations 1996* which states:

A disposition of land is an exempt disposition if –

(e) it is the leasing of land for a period of less than 2 years during all or any of which time the lease does not give the lessee the exclusive use of the land.

It is proposed that in order to consider the Applicants request in a timely manner, this exemption be utilised. Elected Members will note the proposed Term and non-exclusive nature of the proposed Non-Exclusive Licence Agreement allows for this.

**Conclusion**

The Futuro will provide the community with an opportunity to benefit from a facility it would not be able to use if the structure was not erected on the Reserve.

When considering the demonstrated benefit to the community along with the Non-Exclusive Licence arrangement, which mitigates all risk to the City, it is recommended Council approve the arrangement consistent with the details and key terms as noted within this report.

**Key Relevant Previous Council Decisions:**

At the Ordinary Council Meeting on 24 November 2020, in consideration of item TS18.20, Council accepted the Management Order for Reserve 53485

**Consultation**

Upon receiving the correspondence from the Applicant, the following teams were consulted with:

**Planning Services**

The City’s Planning Services Team advised they have no objections to land tenure arrangement, but suggested clauses be included within the Non-Exclusive Licence Agreement to ensure the Licensee obtains all relevant Statutory Approvals in order to construct the facility.

**Building Services**

The City’s Building Services Team advised they have no objections to land tenure arrangement, but suggested clauses be included within the Non-Exclusive Licence Agreement to ensure the Licensee obtains all relevant Statutory Approvals in order to construct the facility.

**Health Services**

The City’s Health Services Team advised they have no objections to land tenure arrangement provided the development and ongoing operations of the facility complies with relevant Environmental Health Legislation.

**Parks Services**

The City’s Parks Services has advised that based on the merits on what has been proposed, in principle, there are no objections. However, as the proposal involves placement of temporary structures on the grassed area for a period up to 23 months, this will impact functioning of the reticulation to the grass area and it is suggested a Bond be charged and a ‘Make Good’ clause be inserted to ensure the City mitigates any risk in terms of damage to the Reserve.

**Land & Property**

The City’s Land & Property Team advised they have no objections to land tenure arrangement as the erection of the structure as proposed would be of benefit to the community. The Non-Exclusive Licence Key Terms as proposed within this report mitigate all risk to Council and do not have any cost implications either.

**Strategic Implications**

**How well does it fit with our strategic direction?**

Councils support of this recommendation will ensure an organisation operating within the district can strengthen its capacity to meet the community’s needs.

This aligns with the Great Governance and Civic Leadership Value within the City’s Strategic Community Plan which values quality decision making by Council.

**Who benefits?**

The City’s community would benefit by having a new facility available to use.

**Does it involve a tolerable risk?**

Should Council agree to the recommendation as proposed, the City will not be subject to any risk as the Non-Exclusive Licence arrangement as proposed would mitigate any risk to the City.

The Licensee would also be obligated to obtain all Statutory Approvals prior to construction and the arrangement is also proposed to be at no cost to Council.

**Do we have the information we need?**

All required information has been provided to Council.

**Budget/Financial Implications**

**Can we afford it?**

The Non-Exclusive Licence arrangement as proposed would be at no cost to Council.

**How does the option impact upon rates?**

There is no impact upon rates.

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| **CPS22.21 List of Accounts Paid – November 2021** |

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| **Committee** | 7 December 2021 |
| **Council** | 14 December 2021 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under *section 5.70 Local Government Act 1995*** | Nil. |
| **Director** | Ed Herne - Director Corporate & Strategy |
| **Attachments** | 1. Creditor Payment Listing – November 2021; and 2. Credit Card and Purchasing Card Payments November 2021 |
| **Confidential Attachments** | Nil. |

**Executive Summary**

In accordance with Regulation 13 of the *Local Government (Financial Management) Regulations 1996* Administration is required to present the List of Accounts Paid for the month to Council.

**Recommendation to Council**

**Council receives the List of Accounts Paid for the month of November 2021 as per attachments.**

**Voting Requirement**

Simple Majority.

**Discussion/Overview**

**Background**

Regulation 13 of the *Local Government (Financial Management) Regulations 1996* requires a list of accounts paid to be prepared each month, showing each account paid since the last list was prepared. This list is to include the following information:

1. the payee’s name;
2. the amount of the payment;
3. the date of the payment; and
4. sufficient information to identify the transaction.

**Risk Management**

The accounts payable procedures ensure that no fraudulent payments are made by the City, and these procedures are strictly adhered to by the officers. These include the final vetting of approved invoices by the Coordinator Financial Accounting and the Manager Financial Services (or designated alternative officers).

**Key Relevant Previous Council Decision:**

There are no previous Council decisions to consider.

**Consultation**

Required by legislation: Yes  No

Required by City of Nedlands policy: Yes  No

**Strategic Implications**

**How well does it fit with our strategic direction?**

The 2020/21approved budget is in line with the City’s strategic direction. Payments are made to meet the City’s spend on operations and capital expenses undertaken in accordance with the approved budget.

**Who benefits?**

The 2020/21approved budget ensured that there is an equitable distribution of benefits in the community.

**Does it involve a tolerable risk?**

The 2020/21budget was prepared in line with the City’s level of tolerance of risk and it is managed through budgetary review and control.

**Do we have the information we need?**

All relevant information has been provided in this report and through the attachments.

**Does this affect any CEO Key Result Areas?**

N/A

**Budget/Financial Implications**

**Can we afford it?**

The payments are made in accordance with the approved budget.

**How does the option impact upon rates?**

This does not have any impact upon the rates.

**Conclusion**

The List of Accounts Paid for the months of November 2021 complies with the relevant legislation and can be received by Council (see attachments).