

## **12.3. COMMUNITY DEVELOPMENT**

### **12.3.1. Extension of term of Development Approval - Lot 507 Chestnut Avenue, Kununurra**

<b>DATE:</b>	27 February 2018
<b>AUTHOR:</b>	Senior Planning Officer
<b>RESPONSIBLE OFFICER:</b>	Nick Kearns, Director Planning and Community Development
<b>ASSESSMENT NO:</b>	A6991
<b>FILE NO:</b>	A6991P
<b>DISCLOSURE OF INTERESTS:</b>	Nil

#### **VOTING REQUIREMENT**

Simple Majority

#### **OFFICER'S RECOMMENDATION**

That Council approve an extension of term for development approval DA6/14 for Community Purpose (Kununurra Neighbourhood House) at Lot 507 Chestnut Avenue, Kununurra until 30 June 2019 subject to the condition precedents outlined in the Agreement for Lease for the land having been met by 20 December 2018.

#### **COUNCIL DECISION**

Minute No. 27/02/2018-117894

Moved: Cr T Chafer

Seconded: Cr M Dear

That Council approve an extension of term for development approval DA6/14 for Community Purpose (Kununurra Neighbourhood House) at Lot 507 Chestnut Avenue, Kununurra until 30 June 2019 subject to the condition precedents outlined in the Agreement for Lease for the land having been met by 20 December 2018.

Carried 7/0

## **PURPOSE**

To consider an application for extension of term for development approval DA6/14 for Community Purpose (Kununurra Neighbourhood House) at Lot 507 Chestnut Avenue, Kununurra.

## **NATURE OF COUNCIL'S ROLE IN THE MATTER**

Leader - plan and provide direction through policy and practices

## **BACKGROUND/ PREVIOUS CONSIDERATIONS BY COUNCIL/ COMMITTEE**

On 14 August 2017, the Shire received a request from Kununurra Neighbourhood House to extend the term of the development (planning) approval issued for use and development of a the new Neighbourhood House facility (Community Purpose) at Lot 507 Chestnut Avenue, Kununurra until 5 March 2020. This request is provided at Attachment 1.

The property is located adjacent to the Ewin Centre with frontage to Chestnut Avenue as well as access from Bella Lane, and has an area of 2,073 square metres. The property is vacant and has been set aside as a reserve for the purpose of 'Community Purposes' with a Management Order issued to the Shire with power to lease.

Lot 507 Chestnut Drive was earmarked for future development of a new Neighbourhood House facility a number of years ago and the Shire has actively supported Neighbourhood House in planning for this development over many years.

At the 19 October 2010 Ordinary Council Meeting an item was presented to seek direction on ongoing involvement in the development of a new facility and Council resolved as below:

## **COUNCIL DECISION**

**Minute No: 9319**

**Moved: Cr J Parker**

**Seconded: Cr K Wright**

**That Council provide the following contributions to the development of the new building for Kununurra Neighbourhood House and associated Services:**

- 1. Retain reserve management order of Lot 507, and include the proposed community infrastructure, for the purposes of community use on behalf of the community;**
- 2. Seek funding for the construction of the new building for use by Kununurra Neighbourhood House and associated services;**
- 3. Provide project management of the building construction phase to hand over for occupancy and operation;**
- 4. At an appropriate future time, develop and negotiate mutually agreeable terms and conditions to establish lease arrangements between the Shire**

and Kununurra Neighbourhood House for use of the land and building for community purposes; and

5. As the project evolves, assess any further types of involvement as the need arises.

**Carried Unanimously: 8/0**

Since this resolution, the Shire has continued to support Kununurra Neighbourhood House in the progression of this project through:

- 2012/13 Annual Grant of \$30,000 for a contribution to detailed design drawings.
- 2013/14 Allocation of \$8,530 of unspent Annual Grant, to cover the development application fee.

The initial application for development approval for the proposed new Kununurra Neighbourhood House (Community Purpose) at Lot 507 was considered and approved by Council on 25 February 2014 (Minute No. 10323) and the development approval (DA6/14) in accordance with this decision was issued on 5 March 2014. A copy of the original approval is provided at Attachment 2.

In June 2014, revised plans were submitted to the Shire for endorsement which proposed changes to a number of building setback distances, and changes to the proposed parking layout in order to: realign the driveway; cater for disabled parking bays, and avoid the need to relocate existing services.

The proposed changes were deemed to be minor and all modified/amended setbacks comply with the relevant regulations, and the revised plans were considered and approved by Council at the Ordinary Council Meeting held on 24 June 2014, as outlined below.

### **COUNCIL DECISION**

**Minute No. 10460**

**Moved: Cr G Taylor**

**Seconded: Cr D Learbuch**

**That Council approves the revised parking layout (Sheet SKC001, dated June 14) and development plans for the Community Purpose (Kununurra Neighbourhood House) at Lot 507 Chestnut Avenue, Kununurra and Car Park at Lot 506 Chestnut Avenue, Kununurra.**

**Carried Unanimously 9/0**

A copy of the endorsed (revised) development plans are provided at Attachment 3.

On 25 November 2015, the Kununurra Neighbourhood House Inc. requested an extension of term for development approval DA6/14 for a further two years.

The request for the extension of term was brought to Council on the basis that a second organisation, the Ewin Early Learning Centre, had also expressed interest in this site. It was recognised at the time that both organisations are highly valued within the community and

provide important services within the Shire. It was also acknowledged that the site had remained undeveloped for a substantial amount of time, and therefore that agreed development milestones and timeframes should be established to ensure that the land would not continue to remain vacant for an inordinate length of time.

This request was considered at the Ordinary Council Meeting held 29 March 2016 and Council resolved as follows:

**COUNCIL DECISION**

**Minute No: 11306**

**Moved: Cr D Spackman**

**Seconded: Cr K Wright**

**That Council:**

- 1. Extend the Kununurra Neighbourhood House Development Approval (DA) 6/14 at Lot 507, Chestnut Drive Kununurra for a further two years.**
- 2. Request the Chief Executive Officer to enter into lease negotiations with Kununurra Neighbourhood House; the lease to include agreed development milestones and timeframes.**

**Carried 7/0**

**Minute No: 11307**

**Moved: Cr D Spackman**

**Seconded: Cr K Wright**

**That Council:**

- 1. Request the Chief Executive Officer to investigate alternate options for expansion of the Child Care facility on lot 506, Chestnut Drive; and**
- 2. Request the Chief Executive Officer to investigate alternate options for the construction of a new Kununurra Neighbourhood House facility.**
- 3. Request the Chief Executive Officer to bring the report on future expansion of child care facilities to Council at a future Briefing Session.**

**Carried 7/0**

In accordance with the first Council resolution, the term of DA6/14 was extended to 5 March 2018, and a draft lease (prepared in accordance with Council Policy *CP/PMG 3780 Leasing of Council Managed Reserve Land - Community*) was forwarded to Kununurra Neighbourhood House Inc. on 17 May 2016.

Kununurra Neighbourhood House Inc. provided a written response on 1 July 2016 with several amendments proposed including a request to enter into an Agreement for Lease prior to execution of the lease.

In relation to the requested amendments to the lease, Officers considered these requests complied with Council's Community Lease Policy, and the lease was then amended.

Kununurra Neighbourhood House Inc. requested to enter into an Agreement for Lease on the basis that they did not wish to pay lease rent or rates on the property until such time as they were actually utilising the site, i.e. when they wish to commence development.

The intent of entering into a lease was to include agreed timeframes and milestones within which development must commence, therefore the Agreement for Lease outlines that the Lessee has agreed to accept that lease, following the satisfaction of certain conditions in accordance with this agreement, which in summary requires the Kununurra Neighbourhood House, within 2 years of signing the agreement, to:

1. secure sufficient funding to complete all or a substantial part of the development;
2. have entered into a construction contract or similar agreement for the construction of all or a substantial part of the development on terms acceptable to the Lessee; and
3. have obtained a building permit required for the construction of all or a substantial part of the development.

The final Agreement for Lease was received by the Shire on 13 September 2016, and the Council provided approval to offer Kununurra Neighbourhood House Inc. an Agreement for Lease at the Ordinary Council Meeting held on 5 October 2017, as follows:

#### **COUNCIL MEETING**

**Minute No. 5/10/16-11505**

**Commissioner resolved:**

**That Council authorise the Chief Executive Officer to:**

1. **Offer Kununurra Neighbourhood House Inc. an Agreement for Lease for Lot 507, Chestnut Avenue Kununurra, for a period of two (2) years.**
2. **If the Condition Precedents required as outlined in clause 3.2 of the Agreement for Lease are met by the Lessee, offer Kununurra Neighbourhood House Inc. the 21 year lease for Lot 507, Chestnut Avenue Kununurra at the conclusion of the Agreement for Lease.**

**Carried 1/0**

The Agreement for Lease was executed and dated on 20 December 2016, and is provided at Attachment 4, and the agreed Lease document is provided at Attachment 5.

## **STATUTORY IMPLICATIONS**

### **Planning and Development (Local Planning Schemes) Regulations 2015 - Deemed Provisions**

The *Planning and Development (Local Planning Schemes) Regulations 2015* came into effect on 19 October 2015, and included deemed provisions (Schedule 2) which apply to all planning schemes throughout Western Australia, and take precedence if there is any inconsistency with existing scheme provisions. The deemed provisions primarily relate to the administrative functions of a scheme, such as the process for making and amending local planning policies or development applications.

Clause 77(1)(a) of the deemed provisions allows an owner of land in respect of which development approval has been granted to make an application to request the local government to amend the approval so as to extend the period within which any development must be substantially commenced.

Clause 77 (2)(a) outlines that such an application should be treated as if it is an application for development approval, and 77(2)(b) allows such an application to be made during or after the period within which development approval must be substantially commenced.

Clause 67 of the deemed provisions outlines the matters the local government is to have due regard to in considering an application which include the aims and provisions of the Scheme and *“the requirements of orderly and proper planning including any proposed local planning scheme or amendment to this Scheme that has been advertised under the Planning and Development (Local Planning Schemes) Regulations 2015 or any other proposed planning instrument that the local government is seriously considering adopting or approving.”*

### **Local Planning Scheme No. 7 - Kununurra and Environs**

Lot 507 Chestnut Avenue is zoned under Town Centre under Local Planning Scheme No. 7 - Kununurra and Environs (LPS7). The objectives of this zone are to provide adequate land for the continued development of a main commercial and community facility centre for the town and to apply appropriate development and land use controls to ensure the development is to a satisfactory standard.

The proposed use would be Community Purpose which is defined in LPS 7 as below:

***Community Purpose*** means the use of land and buildings designed or adapted primarily for the provision of educational, social and recreational facilities and services by organisations involved in activities for community benefit.

The proposed use is not listed in Table 1 – Zoning Table and therefore is a land use that required Council's discretion to approve. Normally this would require the proposed use to be treated as an 'SA' use, which requires advertising prior to Council determination.

The use is treated similarly under draft LPS No.9.

The initial application was not advertised on the basis that the land has been set aside for this proposed use, which is consistent with both the objectives of the Town Centre zone and the purpose of the reserve created under the *Land Administration Act 1997*.

The architect and KNH however did consult with the Ewin Centre, which adjoins the site in relation to the proposed development and shared parking and access areas, and the Ewin Centre provided a letter of support for the proposal.

An additional use of Shop (Opportunity Shop) is also proposed for the sale of second hand clothing, however based on the small area proposed (14m<sup>2</sup>) this use is considered to be a minor incidental use that is consistent with the services provided by KNH. Again the inclusion of this use is treated similarly under LPS No.9 and in any case is incidental to the use.

Planning Officers have been delegated the ability to grant extensions of the term of a development period of up to 2 years, however as an extension of term has previously been granted, and the Agreement for Lease that has been entered into, it now needs to be formally considered by Council.

### **POLICY IMPLICATIONS**

Nil

### **FINANCIAL IMPLICATIONS**

There are no financial implications related to Council's decision in this instance and all applicable fees have been paid.

### **STRATEGIC IMPLICATIONS**

*Strategic Community Plan 2012-2022*

Goal 2: Greater returns from regional investment to ensure sustainable provision of appropriate physical and social infrastructure

Objective 2.4: Access to appropriate health, family and community services

Strategy 2.4.3 : Support early childhood and family support services

### **RISK IMPLICATIONS**

Strategic Risk: Failure to comply with legislative requirements leading to damage of reputation and/or financial loss.

### **COMMUNITY ENGAGEMENT**

No community engagement is required.

## **COMMENTS**

The Neighbourhood House construction project is shovel ready with detailed designs and detailed tender documentation. The estimated cost of construction of the facility is approximately \$3.5 million.

It is noted that Kununurra Neighbourhood House Inc have secured funding to complete a substantial part of the development, however have until 20 December 2018 to satisfy the other two condition precedents outlined in clause 3.2 of the Agreement for Lease, therefore it is considered appropriate for the Shire to approve an extension of the term of the development approval to generally align with the Agreement for Lease.

It is acknowledged that by granting a further extension of 2 years that the Kununurra Neighbourhood House Inc. would essentially obtain a further 14 months past the 'latest date' specified in the Agreement for Lease in which to develop. However, it is also noted that the condition precedents specified in the Agreement for Lease only require Kununurra Neighbourhood House Inc. to have obtained a building permit and entered into a construction contract (or similar) for the construction of all, or a substantial part of, the development by 20 December 2018. As such, even if the conditions are satisfied, construction is not likely to commence until April or May 2019 at the earliest, by which time the existing development approval would have lapsed. A more appropriate timeframe, that respects the intent of the condition precedents and so that development is commenced in a more timely manner would be just past this date. This date is nominated as 30 June 2019 and is reflected in the recommendation to Council.

## **ATTACHMENTS**

- Attachment 1 - Letter from Kununurra Neighbourhood House Inc.
- Attachment 2 - Initial Development Approval (DA) 6/14
- Attachment 3 - Development Approval (DA) 6/14 \_ Revised Plans
- Attachment 4 - Executed Agreement for Lease
- Attachment 5 - Lease Document