PROPOSED LEASE TO OPTUS MOBILE PTY LTD OVER PART (APPROX 35M²) OF LOT 26 ON RP728571, HILLVIEW CRESCENT WHITFIELD – DIVISION 6

Kylie Richardson : 19/3/3-80: #2012788V2

RECOMMENDATION:

That Council approve the issue of a lease to Optus Mobile Pty Limited (“Optus”) over an area of 35m² being part of Lot 26 on RP728571, Water Reservoir Site, Hillview Crescent Whitfield for the purpose of a telecommunications facility, subject but not limited to the following:

- Ministerial approval being obtained in accordance with Section 492(1)(e) of the Local Government Act 1993
- Optus to obtain all necessary planning and engineering approvals prior to commencement of any work on the site
- Optus site access to be via Easement B (driveway) and Optus obtaining any required approvals and consents
- Optus to permit Council to attach telemetry transmission equipment to the structure erected by Optus and connect to Optus’ power supply
- Optus being responsible for all rates and charges, including any costs of water usage
- Optus to pay rental in the sum of $10,000.00 plus GST, per annum, with an annual increase in rental of 3%
- Optus making a one off payment to Council of $50,000.00 to cover rent in arrears
- The term of the lease to be ten (10) years from a date to be determined, with one (1) consecutive ten (10) year term; and
- Optus being responsible for costs associated with the preparation negotiation, execution and registration of the lease.

Furthermore, the Mayor and Chief Executive Officer being delegated authority pursuant to section 472 of the Local Government Act 1993 to negotiate and finalise any and all matters associated with the proposed lease, including access.
INTRODUCTION:

This report was deferred from the April Finance and Administration Committee meeting of 15 April 2009.

Aurecon Group (formally Connell Wagner) (“Aurecon”) on behalf of Optus Mobile Pty Ltd (“Optus”) has requested Council's consent to lodge a Development Application for the construction of a 10m high monopole on the subject site. The monopole is intended to replace existing Optus antennas currently situated on the Hillview Crescent water reservoir. Aurecon have previously corresponded with Council with the view to formalising Optus' tenure over this parcel and are seeking Council's preliminary approval to enter into lease negotiations.

BACKGROUND:

Lot 26 on RP728571 is a Water Reservoir situated at Hillview Crescent Whitfield. In 2002, Optus built on the site, using their powers under the federal legislation at the time. No formal lease has ever been entered into. Aurecon has had previous discussions, in 2008, with Council with the view to formalising Optus' tenure. Previously, both Council officers and Optus agreed that the way forward was for the existing antennas to come off the reservoir and a new small monopole be built close by to accommodate them. The new proposal is for a lease over an area of approx 35m² which will house the existing equipment shelter, existing draw pit and proposed 10m Monopole.

Aurecon, via correspondence of 17 April 2008, advised Council that Optus would, upon execution of a lease, make a one-off payment to Council of $50,000.00 to cover rent in arrears over the subject site.

Access to the Water Reservoir is by way of an easement ‘B’ in favour of Council over the adjoining (residential) lot 21 on RP728571, for water pipeline and access purposes. If Optus require access across easement ‘B’, then it will be Optus’ responsibility to obtain consent from the Grantees of the easement.

COMMENT:

Water and Waste

Water and Waste have assessed the proposal and have no objections, subject to conditions.

Property Services

As Council is proposing to dispose of an interest in its land by way of a lease, it will either need to seek tenders, or apply for a Ministerial exemption in terms of 492(1)(e) of the Local Government Act 1993.

Should Telstra wish to provide the use of their facility to any other approved telecommunications carrier it can offer a sublease over part of their facility, and can licence a facility on the tower.
However, the use by way of a lease of any other part of Council's land by any other approved telecommunications carrier will require Council to undertake its requirements in terms of the *Local Government Act 1993*.

**CONSIDERATIONS:**

**Corporate and Operational Plans:**

This report was prepared in accordance with Corporate Plan goal 1.1 (An integrated approach to planning by Council and Stakeholders).

**Statutory:**

The lease will be prepared in accordance with the requirement of the *Land Title Act 1994* and the *Water Act 2000*.

Council will seek Ministerial exemption from the tendering provision in terms of the *Local Government Act 1993* for the following reasons:

- ensuring that the community is receiving the required telecommunications services; and
- there being a financial benefit to Council and subsequently the community by the use of a portion of land not suitable for any of Council's immediate requirements.

**Policy:**

Officers have commenced work on the preparation of a General Policy for these types of arrangement to ensure consistency and transparency.

**Financial and Risk:**

Optus Mobile Pty Ltd will be responsible all costs associated with the preparation, negotiation, execution and registration of the lease. Optus will also be responsible for statutory charges (e.g. rates, water). Optus have also agreed to make a one off payment of $50,000.00 to cover rent in arrears over the site.

**Sustainability:**

This will ensure mobile coverage is maintained which can be very important during emergency events.

**CONSULTATION:**

As per the comments section of the report.
OPTIONS:

1. That Council approve the issue of a lease to Optus Mobile Pty Limited (“Optus”) over an area of 35m² being part of Lot 26 on RP728571, Water Reservoir Site, Hillview Crescent Whitfield for the purpose of a telecommunications facility, subject but not limited to the following:

   - Ministerial approval being obtained in accordance with Section 492(1)(e) of the Local Government Act 1993
   - Optus to obtain all necessary planning and engineering approvals prior to commencement of any work on the site
   - Optus site access to be via Easement B (driveway) and Optus obtaining any required approvals and consents
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   - The term of the lease to be ten (10) years from a date to be determined, with one (1) consecutive ten (10) year term; and
   - Optus being responsible for costs associated with the preparation negotiation, execution and registration of the lease.

   Furthermore, the Mayor and Chief Executive Officer being delegated authority pursuant to section 472 of the Local Government Act 1993 to negotiate and finalise any and all matters associated with the proposed lease, including access.

2. That Council not agree to enter into a lease to Optus Mobile Pty Limited (“Optus”) over an area of 35m² being part of Lot 26 on RP728571, Water Reservoir Site, Hillview Crescent Whitfield.

CONCLUSION:

That Council concur with the recommendation of this report.
ATTACHMENTS:

Map of Subject Area
Proposed Site Plan

L Giacomi
Team Leader Property and Administration

L Kirchner
Manager Corporate Services

B Grosser
General Manager Corporate Services