

### 13.3 Edward Millen Adaptive Heritage Redevelopment Project Update (CR95/2022)

<b>Location</b>	East Victoria Park
<b>Reporting officer</b>	Place Leader Urban Design
<b>Responsible officer</b>	Chief Operations Officer
<b>Voting requirement</b>	Simple majority
<b>Attachments</b>	1. CONFIDENTIAL REDACTED - Attachment 1 - Edward Millen Updated Redevelopment Concept- Low Res [13.3.1 - 11 pages]

<b>Recommendation</b>	
That Council: <ol style="list-style-type: none"><li>1. Notes the information and updates contained within this report.</li><li>2. Requests the Chief Executive Officer to provide a further progress report by the March 2023 Ordinary Council Meeting.</li></ol>	

### Purpose

To present an update to Council for the Edward Millen Adaptive Heritage Redevelopment Project.

### In brief

- At the Special Council meeting held on 2 August 2021, the Council considered a confidential commercial ground lease offer from Blackoak Capital Ventures Pty Ltd and Arget Ventures Pty Ltd (Blackoak) and resolved to accept that offer on the terms provided for in Council resolution 173/2021.
- At the Ordinary Council meeting held on 15 February 2022, the Council resolved to accept the \$4M (ex GST) funding contribution from the Federal Government to deliver the Edward Millen Redevelopment project and delegate authority to the Chief Executive Officer to execute all necessary documentation to formalise the \$4M (ex GST) funding contribution from the Federal Government.
- The Minister for Lands approved the Asset Maintenance Plan for the Edward Millen Heritage buildings on the 16 February 2022.
- Further to Council resolution 173/2021, officers have progressed negotiations with Blackoak Capital Ventures with regards to the terms of the Agreement for Lease and Ground Lease.
- The negotiations with Blackoak have proven to be more complex than envisaged and design changes have been introduced. An overview is provided of some of the issues and how the Town is seeking to resolve these.

### Edward Millen Park

- Detailed design has been completed and Tender documentation has been received for the Edward Millen Park redevelopment.
- Both packages have had updated costing analysis received in September 2022 that are in excess of the council endorsed budget amount.
- A scope for redesign is currently under development to ensure the project can be delivered within the endorsed budget. This scope will be presented to the council for endorsement prior to engaging the consultant to conduct the redesign.
- The opportunity to include indigenous cultural component through public art is also under exploration and will be developed in a separate process from the rest of the park redevelopment.

## Background

1. At the Special Council meeting held on 2 August 2021, the Council considered a confidential commercial ground lease offer from Blackoak Capital Ventures Pty Ltd and Arget Ventures Pty Ltd (Blackoak) and resolved as follows by Council Resolution 173/2021:

*That Council:*

- 1) Accepts the revised ground lease commercial offer from Blackoak Capital Ventures Pty Ltd and Arget Ventures Pty Ltd (ABN 38 896 928 872) for TVP/20/13 Edward Millen Adaptive Heritage Redevelopment as per paragraph 9.
- 2) Approves the Ground Lease of approximately 1.4ha of 15 (Lot 9000 Hill View Terrace, East Victoria Park) be leased to Blackoak Capital Ventures Pty Ltd and Arget Ventures Pty Ltd (ABN 38 896 928 872), or Blackoak and Arget's required special purpose entity in order to facilitate the appropriate corporate structure to deliver the redevelopment. For a term of 20 years with further optional terms of 5 x 10 years for \$122,500 net per annum exclusive of GST and outgoings commencing in year 21 with a \$2,000,000 upfront payment in consideration of the first 20-year term.
- 3) The final lease to include terms reflecting the following requirements for community access for the duration of the lease and any extensions thereof:
  - a) *the tenant shall incorporate a museum space inside the Edward Millen Rotunda building reflecting on the history of the buildings and local area, to be open and accessible to the public free of entry charges;*
  - b) *the tenant shall set aside space inside the buildings suitable for use by not for profit community groups, to be available at least 2 days per week including once on a weekend at no charge;*
  - c) *save where required for security purposes, the tenant shall ensure that the majority of the grounds within the leased premises remain open to the public during business hours on weekdays, evenings and weekends;*
  - d) *the tenant shall permit members of the public who have not booked use of function spaces within the leased premises to take photos for such events as weddings or the like, within the public areas of the leased premises at no charge;*
  - e) *the tenant shall set aside space for community groups to use at no charge within the farmers' market area and other parts of the grounds within the leased premises to host stands or small events and performances.*
- 4) Accepts that a licensed valuer has provided a valuation report assessing the fair market rental of the Property and the draft ground lease agreement has been sighted by the proponent.
- 5) Pursuant to Section 5.42 of the Local Government Act 1995, delegates to the Chief Executive Officer, the following duties/powers in relation to 15 (Lot 9000) Hill View Terrace, East Victoria Park.
  - a) *Authority to make and give any determination required by the Lease on behalf of the Lessor, approval, direction or order in relation to the property.*
  - b) *Undertake any further minor commercial negotiations, if required to progress the development and commercial offer presented to the Town of Victoria Park by Blackoak Capital Ventures for TVP/20/13.*
  - c) *Monitor compliance with, and enforce as necessary, the provisions of the Ground Lease and all matters relating to the Ground Lease.*
  - d) *In exercising this delegation of authority, the Chief Executive Officer shall not make a determination if the Chief Executive Officer believes the matter for decision is a material change to the terms and conditions of the Ground Lease.*
  - e) *If the Chief Executive Officer declines to give a determination (for reasons set out in part 4(d)), the Chief Executive Officer must report the matter to the Council for decision.*

- 6) Requests the Chief Executive Officer to bring a report back to Council following the public submission period required under Section 3.58 of the Local Government Act 1995 seeking Council approval to execute all necessary documents on behalf of the Town of Victoria Park in relation to ground lease a portion of 15 (Lot 9000) Hill View Terrace, East Victoria Park.
2. The Department of Infrastructure, Transport, Regional Development and Communications executed the Deed of Agreement for funding in relation to the Edward Millen Redevelopment Project on 24 February 2022.
  3. The Edward Millen Asset Maintenance Plan was approved by the Minister for Lands on 16 February 2022.
  4. A Deed to facilitate the early surrender of lease has been executed by the Disability Services Commission. The Disability Services Commission occupied part of Lot 9000 Hill View Terrace however, vacated the premises on the 31 March 2022 to allow for the building to be demolished in accordance with the scope of work for the Edward Millen Adaptive Heritage Redevelopment. A withdrawal of caveat has been requested from the Disability Services Commission who have provided provided informal agreement, however require development of an internal process to action the request.
  5. As noted above, Blackoak's commercial ground lease offer is confidential. An agreement for lease with an annexed ground lease has been issued to Blackoak. The terms of these have been under negotiation, with the Town having regard to the terms of the above Council resolution. The agreement for lease is a commercially sensitive, confidential document. Release of its contents has the potential to affect delivery of the outcomes that the Town is seeking to achieve. This report therefore contains limited information as to some (and not all) of the outstanding points of negotiation.
  6. The Town acquired the Edward Millen property for a nominal consideration. The property is held by the Town in terms of a conditional freehold title, which restricts the use of the property subject to the conditions that the Town and the registered proprietors from time to time of the land:
    - will not use, or permit or suffer the land or any part of it to be used for any purpose other than for "Community, Recreational, Civic, Entertainment, Education, Cultural and Creative Industry, Heritage and Small Scale Production";
    - without limiting the generality of paragraph (a), will not use, or permit or suffer the land or any part of it to be used for any illegal, improper or commercial purpose;
    - will apply all premiums, lease rentals, charges or other income received from all leases, subleases, licences and other use of the land to maintain, repair and renew any building, facility or structure on the land and to maintain the grounds of the land as appropriate, in accordance with the provisions of the Trust Deed entered into between the Transferee and the State of Western Australia acting through the Minister on 8 September 2020; and
    - will observe and perform the other conditions contained in section 75 of the LAA.
  7. Section 75 of the *Land Administration Act 1997* allows the transfer of land in fee simple for a nominal price subject to such conditions concerning the use of the land, with a focus on the community benefit to be provided from the specified use. Commercial use is generally prohibited unless authorised by the Minister through approval of lease terms. Authorisation of any such commercial use is discretionary and is likely to include an assessment of complimentary benefit to the community. Blackoak has presented revised permitted use definitions to the Town for consideration and approval by the Department of Planning, Lands and Heritage (DPLH), with the intention of including these definitions in the Ground Lease. Blackoaks's revised definitions of the allowable uses have been reviewed by DPLH Land Management, who have confirmed that the DPLH is comfortable in-principle with what has been proposed, and formal consent will be facilitated once lease documentation is provided to DPLH Land Management for consent under Section 75(6) of the *Land Administration Act 1997*.

8. Blackoak is seeking leasing documentation to authorise Blackoak to grant sub-leases and sub-licences within certain agreed upfront parameters without requiring ministerial approval for each sub-lease and sub-licence. Blackoak notes that it would be almost logistically impossible for every sub-lease or sub-licence to require separate ministerial approval. The nature of the project includes multiple small market stallholders and artisan retailers, often on short term arrangements. It would be administratively difficult and costly for Blackoak to seek separate Ministerial approvals for every sub-lease or sub-licence. The Town has been working with DPLH on a better outcome, with a view to developing a streamlined approach in relation to the registration process for sub-lease and sub-licence agreements.
9. Blackoak has previously proposed to rescope the capital works associated with the Rotunda building following a request to demolish a portion of the existing building. Following advice from the Town the extent of demolition has been reduced in the latest version of the concept design. This brings the scope of the project in line with the original funding agreement. A variation request to vary the scope of the funding agreement is not expected to be required and the variation will be for timeline only.
10. The Town has been liaising with various stakeholders, including Blackoak and Western Power, to facilitate the relocation of a district electricity transformer onto part of Lot 9000 Hill View Terrace to ensure it does not adversely impact the development. The key issues being reviewed involve easement requirements, including details as to the extent of any zones around the proposed easement and what can/cannot be done within those zones.
11. Blackoak had introduced a change by way of a licence for non-exclusive use of the existing driveway leading from Hill View Terrace over the Hillview Bushland property (Lot 1000 on Deposited Plan 410921) to provide access for staff car parking. This was a new request not previously part of the lease negotiations. It is understood that Blackoak's most recent design has removed the need for this licence.

#### Edward Millen Park

12. At the 18 February 2020 Ordinary Council Meeting (OCM), elected members approved the Edward Millen Park Masterplan to proceed to detailed design, with the requirement to "include an option for a water play space/feature".
13. On the 19 May 2020, the Council acknowledged that further investigation into a water feature for Edward Millen Park Masterplan has been completed and approved the Edward Millen Park Masterplan to proceed to detailed design without a water play/space feature.
14. The Detailed Design Tender was approved in June 2020 with a design Team led by Hassell Studio.
15. 18 May 2021 OCM item 13.3 was provided to Council to approve the detailed design documentation of the Edward Millen Reserve. The cost estimate for the detailed design provided in the report was \$9.1m, with escalation due to local and international market conditions, inclusive of labor and materials cost increases. Council Requested that an option analysis be undertaken to show the impact of the total construction to cost no more than \$6m and no more than \$7m.
16. In July 2021 Council requested a tender documentation be created at a \$7.5m budget. And allowed a preferred option at a higher cost be detailed that would be reliant on the sourcing of additional funding.
17. In July 2021 council noted that the Edward Millen Park Tender would be released at the most appropriate time to compliment the Adaptive Heritage Redevelopment of the Edward Millen Buildings.
18. The final tender documentation was received by the Town in May 2022. As per the July 2021 council endorsement two sets were received the \$7.5 million option and the higher cost option. During the design process in October 2021 these were estimated at \$6.4 and \$9.1 million ex GST.

## Strategic alignment

Economic	
Community priority	Intended public value outcome or impact
EC1 - Facilitating a strong local economy.	The overall vision for the Edward Millen Adaptive Heritage Redevelopment will deliver a precinct providing opportunities for commerce, tourism, employment and entrepreneurship. These uses will be managed through sub lease agreements that are consistent with the head lease.

Environment	
Community priority	Intended public value outcome or impact
EN5 - Providing facilities that are well-built and well-maintained.	The ground lease will ensure the facility is well maintained and well managed.

Social	
Community priority	Intended public value outcome or impact
S4 - Improving access to arts, history, culture and education.	The Edward Millen Adaptive Heritage Redevelopment aims to deliver services aligned with the arts, culture and education. All are permitted purposes in the ground lease.

## Engagement

Internal engagement	
Stakeholder	Comments
Property Development and Leasing Manager	Input into the report and commercial negotiations.
Strategic Projects Manager	Input into the report and project / design coordination
Manager Development Services	Input into project progression
Manager Place Planning	Input into project progression

## Other engagement

Stakeholder	Comments
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Department of Infrastructure, Transport, Regional Development and Communications	Ongoing liaison regarding Funding agreement and required variation of funding agreement timelines.
Department of Planning, Lands and Heritage	On-going dialogue to facilitate various lease requirements.
Department of Communities	Coordination regarding the surrender of lease, vacating of 15 Hill View Terrace building and withdrawal of caveat on the certificate of title.

## Legal compliance

[Section 3.58 of the Local Government Act 1995](#)

[Section 75 of the Land Administration Act 1997](#)

## Risk management consideration

Risk impact category	Risk event description	Consequence rating	Likelihood rating	Overall risk level score	Council's risk appetite	Risk treatment option and rationale for actions
Financial	Not accepting the ground lease divestment may result in on-going heritage maintenance obligations.	Moderate	Likely	High	Low	TREAT risk by proceeding with the ground lease divestment.
Environmental	Not accepting the ground lease divestment may result in further deterioration of the Hazardous Materials currently constraining the site.	Moderate	Likely	High	Low	TREAT risk by allowing the redevelopment to occur which will decontaminate the structure of HAZMAT materials.
Health and safety	Without the restoration works the buildings will continue to be unsafe for use.	Moderate	Possible	Medium	Low	TREAT risk by proceeding with the ground lease divestment which will allow restoration works to be undertaken.

Infrastructure/ ICT systems/ utilities	Not applicable.					
Legislative compliance	Not applicable.					
Reputation	Not accepting the ground lease divestment may result in the reputational loss having not achieved activation and redevelopment of the Edward Millen State Heritage listed buildings.	Moderate	Possible	Medium	Low	TREAT risk by proceeding with the ground lease divestment resulting in the redevelopment
Service delivery	Not applicable.					

## Financial implications

<b>Current budget impact</b>	Sufficient funds exist within the annual budget to address this recommendation.
<b>Future budget impact</b>	<p>Future budget impact involves the following:</p> <ol style="list-style-type: none"> <li>1. The Edward Millen Heritage buildings will require limited on-going financial commitments by the Town. These will be informed by an Asset Maintenance Plan annexed to the ground lease.</li> <li>2. The negotiated annual rental income is \$122,500 net per annum excluding GST and outgoings. At the commencement of the lease, the first 20 year term will include CPI on the agreed market rent, this will compound over the 20 year term. The CPI has an agreed range set to a minimum of 1% and maximum of 2.5%. At 2.5% the rent in year 21 would be \$200,731. At 1% the rent in year 21 would be \$149,473.</li> <li>3. Rates revenue income will be generated from the ground lease and will have a positive financial benefit to the Town. The anticipated rates from the existing footprint of heritage buildings once revitalised is estimated to be approximately \$43,000 per annum, this does not account for any further additional structures. Over the 20 year term it equates to \$1,020,490 inclusive of the long-term 2% per annum forecasted rates increase.</li> </ol>

## Analysis

19. The lease and related commercial negotiations have proven to be complex. Significant capital is to be invested by Blackoak for commercial and public benefit. The Town's chosen development partner Blackoak is a sophisticated, well advised investor and developer. Rigorous due diligence has been applied by the investor to match the level of capital investment and the unique risks that apply to this conditional freehold property.
20. Blackoak had requested that a Side Deed be provided by the State of WA (DPLH) to mitigate risks associated with the unusual nature of the Town's conditional freehold ownership title to the property (the 'Risks'). The side deed was intended to provide mechanisms to preserve Blackoak's leasehold interest, in the event that the Town's conditional freehold ownership title were to be forfeited to the State of WA, for a reason that is not the fault of Blackoak. The current (and potentially final) position of DPLH Land Management is that the Side Deed will not be provided.
21. Unless such a Side Deed can be provided to protect Blackoak's leasehold interest and the associated significant investment, Blackoak will require lease covenants from the Town to mitigate the Risks.
22. The Town is looking at the Risks and how these might be addressed, including through the terms of the Agreement for Lease and the Lease. This is with a view to presentation back to Council at a future meeting.
23. It should be noted that the Town has not entered into a binding lease arrangement at this stage. Prerequisites for a binding lease arrangement to be entered into include:-
  - a. The negotiation of final draft transaction terms that are acceptable to Blackoak and appropriate to be reported to Council for consideration;
  - b. Council approval;
  - c. Assessment of final transaction terms against appropriate legislative and legal requirements and compliance with applicable requirements.

### Edward Millen Park

24. The tender documentation received in May 2022 did not have an accompanying updated cost estimate. This cost analysis was subsequently conducted and has been received by the Town in September 2022. Due to extreme construction industry cost escalation in the past 12 months the cost estimates for the tender documentation packages were \$8.8 million and \$11 million.
25. Town officers are currently developing a detailed scope for a round of redesign to bring the project within July 2021 endorsed budget of \$7.5 million. This scope will be presented to council for approval prior to proceeding with the redesign.
26. The redesign presents an opportunity to include indigenous cultural component to the park through public art. The spatial requirements for this will be included in the redesign scope and the park construction. However, the public art procurement process and delivery will occur separately.
27. Design changes will also be required to ensure appropriate integration with the design within the Edward Millen House lease area.

## Relevant documents

Not applicable.

## Further consideration

28. Attached is the last concept design that was received by officers from Blackoak Capital for Edward Millen House. This is provided as a confidential attachment given the concept contains information that has a commercial value to Blackoak Capital.