

18 CONFIDENTIAL REPORTS

18.1 PROPOSED OFFER OF PAYMENT INTO CAR PARKING FUND

Record Number: CC19/50;IC19/463

Author(s): Scott Twine, Development Planner

Previous Motions: Nil

Attachments:

1. Letter of Offer from Exchange Gawler for Payment into Car Parking Fund CR19/47537 
2. Gawler Town Centre 2017-2020 Car Parking Strategy CR17/53551 
3. Legal Advice - Car Parking Fund CR19/47568 - Confidential 

Reason for Confidentiality

In accordance with Sections 83(5) and 84(6) of the Local Government Act, 1999 - the Chief Executive Officer considers that this item may be considered in confidence by the Council pursuant to Section 90(3) on the grounds that it relates to:

- (b)(i) information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council
- (h) legal advice.

OFFICER'S RECOMMENDATION

18.1 Proposed Offer of Payment into Car Parking Fund

That:

1. Pursuant to Section 90(3) (b)(i),(h) of the Local Government Act 1999 (the Act), the Confidential Council Meeting orders that the public be excluded from attendance at that part of this meeting relating to Item 18.1, expecting the following persons:

- Chief Executive Officer
- Manager Development, Environment & Regulatory Services
- Manager Infrastructure & Engineering Services
- Acting Manager Finance & Corporate Services
- Manager Business Enterprises & Communications
- Manager, Library and Community Services
- Minute Taker
- Mr Damien McGee – Exchange Hotel

to enable the Confidential Council Meeting to consider Item 18.1 in confidence on the basis the Confidential Council Meeting considers it necessary and appropriate to act in a meeting closed to the public (excepting those persons listed above) in order to receive, discuss or consider in confidence the following information or matter relating to Item 18.1:

Pursuant to Section 90(3):

- (b)(i) information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council

(h) legal advice

2. Accordingly, on this basis, the principle that meetings of the Confidential Council Meeting should be conducted in a place open to the public has been outweighed by the need to keep the information or matter confidential.

PRESENTATION

Mr Damien McGee will give a brief presentation to the Council on this matter.

OFFICER'S RECOMMENDATION**That Council:-**

1. Reject the proposed car parking contribution of \$20,000 paid over eight quarterly instalments (being for a duration of 2 years) in respects to proposed Development Application 490/206/2018.
2. Seeks that the Chief Executive Officer continue negotiations with the relevant parties to pursue a Car Parking Fund contribution that aligns with the 2018/2019 fiscal year's gazetted rate of \$7,456 for the agreed car parking shortfall.

RECOMMENDATION

1. Pursuant to Sections 91(7) and 91(9) of the *Local Government Act 1999* the Council orders that the:
 - The minutes
 - The written report
 - Attachments 1 and 3 to the written reportassociated with Item 18.1 Proposed Offer of Payment into Car Parking Fund, having been considered by the Council in confidence under Section 90(3)(b)(i),(h) be kept confidential and not available for public inspection until upon negotiations between the parties are finalised, on the basis that the information received, discussed and considered in relation to this agenda item is:

Pursuant to Section 90(3):

(b)(i) information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and legal advice.

(h) legal advice

2. Further that Council delegates the power of review and revocation, but not the extension, of the confidential order to the Chief Executive Officer on a monthly basis in accordance with the provisions of Section 91(9)(c) of the *Local Government Act 1999*.
3. All confidential orders will be reviewed at least annually in accordance with the *Local Government Act 1999*.

SUMMARY

A Development Application (490/206/2018) was lodged with Council administration on 19 April 2018, which seeks to increase the patronage associated with the Exchange Hotel in operation at 155 Murray Street, Gawler. Specifically, the proposal seeks to vary a condition of consent imposed on a previous development authorisation that limited the patronage of the hotel to a maximum of 230 persons. The condition is proposed to be varied to accommodate an additional 120 patrons (bringing the proposed capacity to a maximum of 350 persons). If the applicant is successful in obtaining approval to increase the capacity within the development proposal, a subsequent application would be made to the Liquor and Gambling Commissioner to increase the capacity of the hotel's current Liquor Licence.

To aid in the planning assessment of the application, the applicant engaged a traffic engineer who determined the proposed increase in patronage would result in an additional car parking demand of 40 spaces. Whilst the traffic engineer is satisfied that sufficient public car parking exists to accommodate the proposed patronage increase, such a shortfall in car parking can only reasonably be accepted if a payment into Council's car parking fund is made.

As Council administration are only authorised to execute car parking contributions that align with the rate endorsed by Council, the acceptance of an alternative contribution is at the discretion of the Council. It however should be noted that while Council can accept a reduced contribution it may not be best practice to do so. Without extremely strong and unique reasons to depart from the gazetted contribution amount, the acceptance of a lesser amount would be strongly discouraged.

Accordingly, the applicant is proposing that Council consider a total car parking contribution of \$20,000 in lieu of the value of the gazetted rate (being a total of \$298,240). The contribution is proposed to be paid in eight quarterly instalments.

The proposed offer is considered inappropriate in the context of the findings of the Gawler Town Centre 2017-2020 Car Parking Strategy, previous contributions made and based on the intensity of the proposed patron increase.

Upon a determination by the Council on the appropriateness of the proposed car parking contribution, a determination on the Development Application will also be required.

BACKGROUND

Council in November 2005 established a car parking fund to allow applicants of development proposals in the Town Centre Historic (Conservation) Zones to substitute an agreed shortfall of on-site car parking for a payment in lieu. The fund is established under Section 50A of the *Development Act 1993* (The Act) and enacted through provisions in the Town of Gawler Development Plan.

Whilst it is generally the desire of the Development Plan for a development proposal to provide the required extent of car parking on-site, in limited circumstances a financial payment in lieu can be accepted. The Town Centre Historic (Conservation) Zone polices limit such an occurrence to the following circumstances and where considered appropriate:

- 1) To retain an existing building of heritage interest or achieve a desired built form outcome (Principle of Development Control 27); or
- 2) Substitute the required level of on-site car parking with a car parking fund contribution (Principle of Development Control 29(a)).

The above two provisions of the Development Plan outlined above are enforced via Section 50A(5) of the Act, which states the following (emphasis added):

5) *If—*

- a) *a person is proposing to undertake development within a designated area; and*
- b) *application for development plan consent is made under this Part; and*
- c) *the relevant authority determines, after taking into account the provisions of the relevant Development Plan, that the proposal does not provide for sufficient spaces for the parking of cars at the site of the development; and*

- d) *the relevant authority and the applicant agree that the applicant will make a contribution to the relevant car parking fund in lieu of providing a certain number of spaces for the parking of cars at the site of the development,*

1.

2. *then the applicant must make a contribution to the car parking fund of an amount calculated in accordance with a determination of the relevant council (and the development may proceed despite the situation with respect to car parking at the site of the development).*

In light of the above, where a car parking fund exists and the relevant authority determines that a car parking fund contribution is required, the applicant must make a contribution to the fund at the rate agreed to by the Council. In contrast, a payment into the car parking fund is not required where a proposal provides the required level of car parking on-site or does not exacerbate an existing car parking shortfall associated with an existing use. As such, a proposed contribution into the fund occurs in limited circumstances.

To provide certainty to applicants and Council staff, a car parking fund rate is set and reviewed annually by the Council within the fees and charges. This contribution rate is then gazetted by way of government gazette. In the event where a proposal has sufficient planning merit and seeks to provide for a car parking contribution that matches the established contribution rate, Council administration can accept the contribution without a resolution of the Council. For the 2018/19 fiscal year, the rate for the Light Policy Area (being Murray Street and surrounds) of the Town Centre Historic (Conservation) Zone, has been set to a value of \$7,456.00 per car parking space. It is common for applicants seeking car parking contributions to enter into an agreement to facilitate an appropriate payment arrangement rather than a lump sum payment.

In the event where an alternative contribution is offered to that of the set rate, the acceptance of such a contribution is at the discretion of the Council. Inevitably, these discussions are reserved for the discretion of Council as the rate accepted may impact future contributions by other developments in Gawler as well as the strategic outcomes for the implementation of the fund. The council's use of the fund is limited in accordance with Section 50A(8) of the Act, which states:

- 8) *The money standing to the credit of a car parking fund may be applied by the council for any of the following purposes (and for no other purpose):*
- a) *to provide car parking facilities within the designated area; or*
 - b) *to provide funds for (or towards) the maintenance, operation or improvement of car parking facilities within the designated area; or*
 - c) *to provide funds for (or towards) the establishment, maintenance or improvement of transport facilities within the area of the council with a view to reducing the need or demand for car parking facilities within the designated area.*

Council's Gawler Town Centre 2017-2020 Car Parking Strategy provided a study which reviewed the current car parking provision within the Gawler Town Centre and outlines some of the options to improve the provision and efficiency of such parking (including the implementation and operation of the car parking fund).

COMMENTS/DISCUSSION

The Exchange Hotel (the Hotel) are proposing an increase in patronage by 120 persons. The increased capacity has been sought in order to ensure the long term success of the hotel and to aid in better managing problems the hotel has faced on Friday and Saturday nights. These problems were noted to include queue lengths, patrons seeking illegal entry to the hotel via Pioneer Park and to prevent staff conflict in rejecting patrons when at capacity.

A car parking report and a building occupancy report were submitted with the applicant's development application to support the proposed patron increase. The building occupancy report confirms the hotel maintains sufficient amenities (toilet facilities) to accommodate a potential patronage of 500 persons. This however, is of no consequence to the planning merits of the proposal but rather relates to a later building rules assessment should the application planning consent be granted (currently under assessment). The traffic engineer engaged by the applicant determined that

the car parking demand should be considered on a per patronage approach. Subsequently, the traffic engineer recommended the application of a rate of 1 space per additional 3 patrons. This rate is consistent with Council's Development Plan's rate for akin land uses and was concurred with by an independent traffic engineer engaged by Council. Consequentially, the proposed increase in 120 patrons would result in an additional car parking demand of 40 spaces. Due to the developed nature of the site, the additional car parks required to service the increase are unable to be provided on-site. The traffic engineer considers that despite the shortfall in car parking, this shortfall would not have a detrimental effect on the provision of car parking within the immediate locality of the hotel due to the presence of existing public on and off street car parking available during peak demand.

Whilst Council administration concur with the findings of the above car parking assessment by the applicants traffic engineer, the acceptance of such a car parking shortfall can only occur if a financial contribution is made in lieu. This occurs because the land is located within a designated area and does not provide the required level of car parking on the site of the development (Section 50A (5)(a)(c) of the Act). Based on the assessment undertaken by the applicant's traffic engineer, this would result in a required contribution of \$298,240 when the Council's 2018/2019 car parking contribution rate is applied. Due to the significant contribution required, the applicant has proposed an alternative contribution into the car parking fund. This contribution comprises of \$20,000 paid in eight quarterly payments.

The \$20,000 offer is premised on the following:

- Offer is reasonable when considering the extent to which the increased capacity may impact on the availability and use of car parks within the local area;
- It is anticipated that the increased capacity would, in a practical sense, only be utilised for approximately 4 hours on a Friday night, this is a total of 4 hours per week;
- Sufficient on-street car parking spaces are available during these times to accommodate any increase in demand;
- Many patrons who attend the premises at the time of the increased demand do not drive to the premises. Rather, they utilise the services of Uber, taxis and or have a friend or family member drop them off at the Hotel;
- The Hotel employs 30 local people and is a financial contributor to 25 community groups in and around Gawler. The offer above represents an amount that will not put the hotel in a position such that it would have to reduce the amount contributed to local groups, or reduce the number of hours available to its employees; and
- According to the Gawler Town Centre 2017-2020 Car Parking Strategy, only \$174,216 has been added to the car parking fund in a nine year period. This equates to \$19,357 per year. The hotel considers its offer to be reasonable when comparing it against this figure, as their offer equates to slightly more than the total amount added to the fund on average per year.

The letter from the hotel providing the contribution offer and the associated rationale is contained within **Attachment 1**.

In order to consider the appropriateness of the proposed offer, a number of factors should be considered. These factors include:

1. The findings and directions of the Gawler Town Centre 2017-2020 Car Parking Strategy and the impact on potential use of fund;
2. Previous Car Parking Contributions;
3. Previous and ongoing licencing exemptions provided to the Hotel;
4. Contribution rate comparisons;
5. Purpose of public car parking; and
6. Legal advice obtained

Gawler Town Centre Car Parking Strategy

In 2017 the Council engaged GTA Traffic Consultants to prepare the Gawler Town Centre Car Parking Strategy in consultation with Council administration. Council subsequently adopted the strategy in October 2017. The strategy reviewed the current car parking provision within the Gawler Town Centre and outlines some of the options available to improve the provision and efficiency of car parking. A copy of the strategy is contained within **Attachment 2**.

The strategy acknowledged that the average car park occupancy levels in Gawler on a weekday and weekend are around 50% across all car parks surveyed. However, a small number of the car parks close to the main destinations display occupancy levels close to or at capacity. This finding generally supports the assessments of the respective traffic engineers in considering the proposed patronage increase will not detrimentally effect the provision of car parking in the region. As such, the merit in considering the acceptance of a car parking contribution is not considered to be the key consideration, but rather the value of the contribution offered.

Section 5 of the strategy focuses on the car parking fund and notes that the purpose of the fund is to operate as a development incentive and not a penalty. The incentive to use the car parking fund arises from a reduction in up-front development costs by not having to construct additional car parking and increasing future revenue potential from a larger floor area or in this case, additional patrons. Despite this incentive, the car parking fund is more often perceived as a development tax.

This notion of an incentive is premised on the actual costs than an applicant would incur in providing/constructing the required extent of car parking. The study acknowledges that the contribution rates are significantly below the cost of physically providing car parking spaces. The studies identified costs of physically providing a car park is provided below:

	Multi-level Car Park	Ground Level Car Park
Cost per car park	\$15,000-\$30,000	\$5,000
Cost per car park including land acquisition	\$25,000-\$40,000	\$15,000

It is noted that the costs of providing a ground level space were based on a 2008 project delivered by Council and as such, have likely increased.

In light of the above, the cost of the contribution sought by Council is significantly below the cost of constructing a car park. As such, the current gazetted rate essentially demonstrates an intention of Council to utilise the car parking fund as a subsidy/incentive to accompany a greater contribution put forward by Council. This is reconfirmed by the strategy, which notes the contribution to the car parking fund is likely to be at or below the net cost to a development of constructing on-site car parking (substantially less in the case of multi-level or undercroft parking). This also assumes that the cost of land has already been borne by the developer in acquiring the site and is not a further consideration in the development costs. Accordingly, transferring a development's car parking obligation to Council through payment of a contribution increases the development capacity of a land parcel and is to the benefit of an applicant/developer and not to Council.

In the case of the hotel's proposed contribution, a \$20,000 investment would not provide the hotel with a return of 40 car parks. Therefore, if the hotel was not seeking to provide a contribution but rather to develop a car park to the extent required to accommodate the proposed development, the cost in doing so would generally exceed the \$298,240 contribution total and the \$20,000 offer in any event (particularly if additional land would be required to be purchased/acquired).

Irrespective of the above and despite the public perception of the fund as a development tax, the strategy reconfirms the benefit of Council operating a car parking fund and notes it could be used to improve the following:

- Improve design, layout and operation of existing low utilisation public car parks to encourage increased use and reduced parking demand elsewhere, which could include:
 - Lighting
 - Security
 - General amenity quality
 - Vehicle and pedestrian access.
- Improve pedestrian routes to and from car parking areas (safe, Disability Discrimination Act compliant, well-lit and pleasant, way-finding signage) to Murray Street and other key destinations to encourage relocation of excess demand and reduce multi-parking trips.
- Make changes to time restrictions.
- Install directional and information signage to car parks for drivers to navigate to car parks and encourage use of lower occupancy car parks.
- Install town centre bicycle parking at key locations, particularly in relation to existing and proposed bicycle routes that provide access to the town centre and identified locations of existing bicycle parking demand.

The strategy further provides detailed examples on how location specific car parking could be improved. This includes but is limited to the Finnis Street car park, which is located within close proximity to the hotel. Alternatively, in the case of the hotel, improvements could be made to accommodate increase hours of the Finnis Street multi-level car park, improved lighting to the Council Administration Centre or provision of a safe pedestrian link across High Street to access the Council Administration Centre car park. The \$20,000 contribution offered would not enable Council to undertake the abovementioned works or any works of significance in terms of providing or upgrading car parking in the locality – particularly as it relates to the proposed development. As such, the contribution would not serve the intent of the car parking fund to offset an acceptable level car parking shortfall with an appropriate financial contribution.

The findings of the Gawler Town Centre Car Parking Strategy support the operation and value of the car parking fund and as such, do not support the provision of an alternative figure that would not achieve the strategic directions and desired outcomes of the study or more importantly Section 50A(8) of the Act.

Previous and Future Contributions

Currently, the Town of Gawler Car Parking Fund contains \$447,740. The fund comprises of payments made in relation to previous developments, which include but are not limited to:

Development Number	Description	Contribution Value
490/138/2008 and 490/749/2006	Phoenix Plaza	\$147,275
490/582/2013 and 490/617/2009	Golden Fleece Hotel	\$116,600
490/723/2007	Murray Street Shop	\$73,500
490/508/2011	Adelaide Road Clinic	\$44,838
490/672/2010	Gawler Mill	\$26,500
490/843/2005	Medical Centre Julian Terrace	\$14,866
490/567/2007	Adelaide Road Office	\$11,010
490/776/2007	Adelaide Road Office	\$3,670

It is noted that in all the cases outlined above, the applicant sought to provide a contribution consistent with the established car parking contribution rate and also to develop an extent of physical car parking on site. The contributions above were offered to offset an extent of the required car parking and not the full amount such as that sought by the hotel. Since 2008 the fees obtained have been utilised in various parking initiatives, including improvements to the Eleventh Street car park, Finnis Street Multi-level car park and the Gawler Retail project, which in conjunction with other projects combined to a total investment of \$698,243.

It is noted that the acceptance of this significantly discounted offer, may impact future contributions by other developments in Gawler and would likely prejudice the future administration of the fund.

Ongoing Licencing Exemptions

The hotels submission notes that the proposed patronage increase is required to facilitate the ongoing growth of the hotel. Whilst Council administration acknowledges that it would be desirable for the hotel operator to increase the patronage of the premise permanently, Council has previously accommodated limited liquor licences for the hotel. These liquor licences have generally been to accommodate peak trading over the Christmas and New Year period and the occasional exemption to a special event.

Accordingly, whilst the existing development approval limits the general patronage of the hotel to a maximum of 230 patrons, Council in good faith and in appropriate circumstances has accommodated the limited increase of patronage for the hotel. A similar temporary licencing arrangement has been accommodated for various hotels within the Gawler region upon request.

Comparison of Contribution Rates

As detailed above, the Gawler Town Centre Car Parking Strategy supports the operation of the car parking fund as a development incentive moving forward. Whilst the contribution rate is gazetted annually and generally increases with CPI, the value of the contribution rate is significantly lower than other Council regions. A summary of other Council contribution rates is provided below:

Council	Maximum Car Parking Rate
Town of Gawler	\$7,456
Mount Barker	\$25,666
Victor Harbour	\$15,000
Light Regional Council	\$3,750
Unley Council	\$15,000
Average Contribution Rate:	\$13,374

Whilst each Council will have its own respective strategy and rationale for the implementation of the obtained funds, the use of a car parking fund is not uncommon amongst Councils. As noted above, the Town of Gawler fund operates with the notion of serving as a development incentive and not a development tax. The incentive is provided to accommodate and achieve development that would otherwise not be able to be undertaken.

Purpose of Public Car parking

In seeking a payment into the car parking fund, the hotel operator is seeking for the additional patrons to utilise Council's existing public car parking facilities; being existing public on and off street car parks. Whilst the applicant's traffic engineer has confirmed that existing public car parking exists to accommodate the proposed development, the intent of public car parking should be considered.

Despite it generally being the desire of Council's Development Plan for developers/applicants to provide the required extent of car parking on the site of the development, Council also provides a level of public car parking for use by residents. It is noted however, that on and off street public car parking is generally provided to accommodate an overspill of any car parking associated with existing land uses during peak demand periods and is not intended to accommodate the entirety of a land uses car parking demand. Accordingly, it should be considered whether the acceptance of the applicants proposal would be in the public's interest, particularly given it may jeopardise the ability of another business (including a hotel operator) to achieve the same extent of development.

Legal Advice

Council administration has sought clarification from Council's legal advisors on the legality of Council accepting an alternative contribution to that of the typical gazetted rate. The advice has confirmed that the gazetted rate can lawfully be departed such that a lower rate can be applied in appropriate circumstances, but that a higher rate cannot be applied. The advice also noted that despite the fact that a decision to depart from the gazetted car parking contribution can lawfully be made, this does not mean that such decisions will also be appropriate. As such, careful consideration should be given as to the reasons why an alternate offer is being made, the difference between the alternate offer and the gazetted amount, the impact of accepting a lower amount on the car parking fund and the public interest in the fund. Without extremely strong and unique reasons to depart from the gazetted contribution amount, the acceptance of a lesser amount would be strongly discouraged.

A copy of the legal advice is contained within **Attachment 3**.

Conclusion

In summary of the above, it is considered that the proposed contribution of \$20,000 is inappropriate. The value offered would not serve the intention of the car parking fund to obtain adequate contributions for the offset of an applicant/developers physical contribution. The proposed contribution is insufficient to enable Council to provide outcomes in accordance with Section 50A(8) of the Act or the strategic directions outlined within the Town Centre car parking strategy. The acceptance of a significantly discounted offer would jeopardise the future operation of the fund, prejudice future contributions by way of precedent and be against public interest.

Whilst the desire to increase the patronage of the hotel is acknowledged, the hotel in its current form is considered to have reached its maximum development potential unless an appropriate contribution is provided or the operator acquires land for the purposes of providing the required level of car parking to accommodate the proposed development.

Given the majority of the discussions relative to the proposed car parking contribution have occurred in the 2018/19 fiscal year, it is considered appropriate and reasonable that the 2018/19 contribution rate be secured for the applicant. This will enable Council administration to accommodate a contribution made by the applicant if the offer is revised to align with the 2018/19 car parking fund rate.

Council administration acknowledge that the car parking contribution required may be perceived as a deterrent rather than a development incentive. To this effect, the Council may consider it appropriate to contemplate an alternative contribution. It would be recommended however, that this consideration be made with respects to the gazetted rate moving forward rather than on a per application/development basis to ensure equity for future applicants/developers. Such a decision however may not be perceived as fair by previous persons whom have made substantial contributions into the car parking fund.

COMMUNICATION (INTERNAL TO COUNCIL)

Property Department
Finance Department
Engineering Department

CONSULTATION (EXTERNAL TO COUNCIL)

Council Solicitors

POLICY IMPLICATIONS

Town of Gawler Development Plan – inconsistent with intent of Town Centre Historic (Conservation) Zone

STATUTORY REQUIREMENTS

Car parking fund established pursuant to Section 50A of the *Development Act 1993*

Assessment of Development Application pursuant to Section 33(1)(a) of the *Development Act 1993*

FINANCIAL/BUDGET IMPLICATIONS

Impact on future administration of car parking fund including investment into the future provision, maintenance, operation or improvement into car parking and transport facilities within the Town Centre Historic (Conservation) Zone.

COMMUNITY PLAN

Objective 2.1: Physical and social infrastructure to service our growing population and economy

Objective 2.2: Growth to be sustainable and respectful of cultural and built heritage

Objective 2.4: Manage growth through the real connection of people and places

Objective 2.5: Local economic activity to create local job opportunities and generate increased local wealth

Objective 5.2: Be recognised as a 'best practice' Local Government organisation

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