

Item: FIN048-18Draft 2018/19 Budget - Consideration of Waratah Private Hospital Car Parking Rates

Author: Strategic Property Specialist

Directorate: Office of the General Manager

Matter Type: Committee Reports

Recommendation:

- (a) That Council continue with 1 hour free parking (as per the 2018/19 exhibited Fees and Charges) to offset the operating loss currently incurred at the Waratah Private Hospital Car Park.
- (b) That the General Manager investigate the consolidation of all Council-owned car spaces onto discrete basement levels with a view to being able to install boom gates or other devices which would enable separate management of the Council car parking spaces and report back to Council on options.

Executive Summary

1. At present Council is losing approximately \$231,000 per annum after operating expenses, for the 150 Council owned spaces located within the Waratah Private Hospital Car Park.
2. Should Council increase the 1 hour free parking to 3 hours free parking, the cost to Council is estimated to be in the order of \$400,000 per annum after operating expenses. This figure is inclusive of the compensation that may be payable to the hospital owners' (consortium) for the decrease in its revenue arising from the increase in free parking.
3. At its meeting of 28 May 2018, Council resolved:
 - (a) *That this report is deferred to the Finance and Governance Standing Committee meeting to be held on Tuesday 12 June for further discussion.*
 - (b) *That current Councillors from the former Hurstville Council provide further information regarding the timeline and activities relating to the agreement between Council and the hospital owner at the time (being Cortez Enterprises), and that staff amend the report, if applicable, to be presented to the June Standing Committee.*
 - (c) *That Council investigate the possibility of providing registered or bona fide volunteer persons with passes which reduces their cost of entry and stay.*
4. Pursuant to part (b) of Council's resolution above, a review of the file, the Contract for Sale, the Development Consent and advice from HWL Ebsworth Lawyers has confirmed that no free 3 hour time limit applied to the parking spaces and that it was always the intention of the Council to adopt a non-differential pricing policy for the public spaces, with only the first hour of parking to be free. No additional information has been provided by former Hurstville Councillors on this matter.

Background

5. Council is the registered proprietor of a 150 space stratum public car park legally described as Lot 1 in DP1157338 and located at 31 Dora Street, Hurstville. The public car parking spaces are located predominantly on levels B3 and B4 within the basement car park, with some spaces being located on levels B2 and B5. In addition to the Council owned parking, the Hospital, as part of the development consent for this property, is required to make an additional 100 car parking spaces available for public and patients/visitor parking.
6. Prior to construction of the hospital, the land was used as an at grade public car park by the former Hurstville City Council. Council sold the site to Cortez Enterprises on a commercial basis in 2008 and there was no requirement as part of the sales agreement for Cortez Enterprises to provide free public or private parking on the site.

Council Purchase of Car Parking Spaces

7. Council subsequently purchased car parking spaces back from the owner for the purpose of public parking. A number of ground floor retail suites were also purchased.
8. Annexed to the Contract for Sale of car parking spaces and retail was a Functional Design Brief that identified that a 3 hour time limit was to be applied to the public car parking spaces. No free parking was required to be provided as part of the purchase of the spaces by Council.
9. Furthermore, Clause 55 (b) of the Contract for Sale stated that:

“The vendor and purchaser confirm they will enter into negotiations in good faith with a view to reaching agreement in respect of the purchaser’s management of the car spaces designed as public spaces in the car parking allocation documents by the date which is 19 months from the date of this contract including the purchaser have the opportunity to tender for cleaning all of the Centre Owned car parking areas within the building. Any agreement will take into account the car parking report of Parking Consultants International dated August 2006, which is attached to this contract and any policy as regards paid public parking in respect of the land then adopted by the Council”.

This clause was included as the parties had not reached an agreement in the management and operation of the car park and further negotiation, in good faith, between the parties was required.

COW060-09 Paid Public Parking within the Medica Centre Building

10. As stated above Council entered into a purchase contract for 160 car parking spaces within the Medica Centre (Waratah Hospital) building upon completion of the building. Clause 55 of the contract required the owner and Council to negotiate, in good faith, the implementation of paid parking in late 2009.
11. On 16 December, 2009 the former Hurstville City Council via COW060-09 resolved in relation to paid public car parking that only the first hour of parking was to be free. Minute No.450 (copy annexed as Attachment 1) indicates that the resolution was moved by Councillor C Wong, seconded by Councillor C Hindi.
12. Furthermore Council considered the imposition of a 3 hour maximum time limit for parking within the building, to be enforced by parking officers. However, this option did not proceed

as the financial returns to Council from fines were significantly lower than the returns possible under a paid public parking arrangement.

13. On 7 January, 2010 Council wrote to Cortez Enterprises (Medica Centre) advising that Council wished to proceed with paid parking on the basis that the first hour of all 260 public car parking spaces (both Council owned and privately owned spaces) was to be free with commercial rates to apply thereafter. A copy of this correspondence is attached as Attachment 2.
14. Furthermore, the development consent for the Hospital did not specify any parking rates or include a requirement that any public or private parking should be provided free of charge for any period of time. The development consent allows for the entire car park to be operated as a commercial car park, consistent with the original sales agreement.
15. It should be noted that Council has never actively managed its spaces and has outsourced the management of the public car spaces to a car parking management company since commencement of the car park operation.
16. For the avoidance of doubt, there was no requirement in the contract for sale to Cortez Enterprises or in the subsequent development consent, that Council or the owner had to reinstate any 3 hour free parking within the development.

Council Subsidises 2 Hour Free Parking 2013

17. In the years that followed, Council requested that the free parking arrangement be increased from 1 hour free to first 2 hours free. This was agreed to by the Hospital owner at the time (being Cortez Enterprises) in August 2013 (CCL245-13) on the basis that Council subsidised the loss in revenue for the additional free hour.
18. The parking fees were subsequently changed following the appropriate regulatory public notification process (28 day exhibition period) as required under the Local Government Act, 1993, to amend the fees applying to all of the publically available car spaces.
19. As a result of the above mentioned changes, the former Hurstville City Council in December 2013 was advised that it was incurring losses for this facility in excess of \$470,000 per annum due to a combination of high strata fees and car park revenue losses.
20. In 2014 due to a best practice approach by the Hospital (being a Consortium made up of Waratah Private Hospital, Generation Healthcare and Goldman Sachs, who bought the Hospital (debt) from Suncorp Bank following the previous owner being declared bankrupt), the operational costs relating to the strata were drastically reduced for the building, that in turn, reduced Council's operational expenses for the car park from \$337,000 per annum to \$265,000 per annum, significantly reducing Council's annual loss at this facility.

Council Subsidises 3 hour Free Parking (2015)

21. In February 2015, Mayor Hindi, by way of media release, informed the public that the first 3 hours parking at the hospital would now be free. Unfortunately, the formal process to amend Council's fees and charges, as is required by the Local Government Act, 1993 did not take place.
22. Without a public consultation process, there was subsequently no formal opportunity for the Hospital's owners' consortium to comment on the proposed changes. The increase in free parking for all the publically available spaces was not supported by the owners' consortium.

23. However, in a sign of goodwill, the owners' agreed to change the parking to first 3 hours free, on the basis that Council would once again compensate them for the loss in revenue that would result from the change.
24. The owners' agreement was provided on the condition that the commercial situation would be reviewed once the long term contractual agreements with Secure Parking, (which the previous owner Cortez had established) expired (February 2016).
25. Based on actual statistical data provided by Secure Parking, the increase to the free parking period from 2 to 3 hours resulted in the level of Council compensation increasing from approximately \$1,500 per month to over \$4,000 per month. In what would be a general upward trend, Council's file indicates that by the month of October 2015, a reimbursement amount of approximately \$7,000 was occurring.
26. On 25 February 2016 following the expiry of the Secure Parking management contract, Council resolved:

"THAT paid public parking continues according to Council's adopted Schedule of Fees & Charges (i.e.; – first 3 hours free).

THAT, notwithstanding the two previous resolutions, should Waratah Private Hospital not wish to proceed on the same basis with Secure Parking for management of their public parking spaces, then Council's public spaces will revert to unpaid 3 hours timed parking patrolled by Council rangers."
27. The above resolution to retain the 3 hour free arrangement gave the Consortium little choice on how the car park would be managed, and appears to be a departure from the 2008 Contract for Sale (Clause 55(b)) that neither party could impose its will on the other in managing the shared car park.
28. Pursuant to the resolution, Council advised the owners' consortium that it would no longer subsidise the free parking period and that if the consortium didn't agree, then Council would manage its spaces independently.
29. Council additionally advised that it did not want to pay for any parking equipment costs including the boom gate as Council did not require security to its part of the car park. Despite being a shared facility with Council and Hospital spaces co-located across various basement levels, Council reasoned that if the Hospital required controlled access then it should be up to the owners' consortium to pay. Council resolved to send its rangers to patrol the Council-owned car parking spaces (and issue fines for overstaying designated parking limits).
30. The owners' consortium would then be left to manage its spaces independently of Council's. However, being a shared facility, the approved configuration of the parking levels does not allow for individual spaces to be separated and/or managed separately from the Hospital's spaces.
31. In the face of mounting costs in relation to the management and operation of the car park and significant loss of revenue, the owners' consortium met with the General Manager on several occasions and prepared a submission to the draft Georges River Operational Plan 2017-2018 (the draft Budget's Fees and Charges).

32. The submission outlined the business case for changing the 3 hour free parking back to 1 hour free, which based on financial modelling, should offset the current losses incurred by Council and the consortium, if car parking occupancy rates reached a level of 80%.
33. The submission also advised Council that the consortium would reserve its legal rights to pursue compensation for any ongoing loss of revenue due to Council's failure to operate its car parking spaces in a manner that was not financially detrimental to the owners' consortium.
34. There is no doubt that the Waratah Private Hospital is considered to be a valuable community asset. However, it should be noted that the previous Hospital owner (Cortez) encountered financial hardship and was placed in receivership as a result of (amongst other things) the exorbitant operational costs associated with running the facility.
35. While costs have reduced for both Council and the owners' consortium (due to an industry best practice approach by the consortium), Council's 150 public car park component of this facility continues to operate at a significant annual loss of more than \$230,000 per annum.
36. It is anticipated that any attempt to again reduce the commercial viability of the Hospital's car park by reinstating the 3 hour free parking regime will be met with opposition by the owners' consortium and a request for significant financial compensation.
37. Waratah Hospital has lodged a submission on the draft 2018/2019 fees and charges which requests that the 1 hour free parking and other daily parking rates remain as shown in the draft fees and charges.

Next Steps

38. Council officers are currently investigating the consolidation of all Council-owned car spaces onto discrete basement levels with a view to being able to install boom gates or other devices which would enable separate management of the Council spaces.
39. Until such time as that consolidation and separate management can be achieved, it is recommended that Council continue with the existing 1 hour free parking period at the site (consistent with the draft 2018/19 fees and charges).

Current Position

40. Council's public car parking spaces currently operate at an annual loss of approximately \$231,000. Council strata fees amount to approximately \$265,000 per annum.
41. Reducing free parking back to a 1 hour period in 2017/18 has increased Council's revenue at the facility by approximately \$50,000 per annum with upward trends continuing. Current utilisation rate for the Council car parking spaces is between 45% and 55%.
42. It is anticipated that the car park could break even or may possibly become profitable at a utilisation rate of 80%. Based on the consortium's modelling, the car park operating at 80% capacity with only the first hour free, could potentially result in Council's current operational costs becoming cost neutral.
43. A new car parking management company (Metro Parking) has been engaged to manage the shared car parking facility. The operator is considered to be a specialist with hospital associated parking facilities. In this regard, both Council and the Waratah Consortium believe that as prudent and responsible asset managers, the car parking management

company should be given an opportunity to increase revenue to at least a position of cost neutrality for both parties.

44. In respect to part (c) of the Council Resolution of 28 May 2018 (FIN029-18) whereby Council resolved;

“That Council investigate the possibility of providing registered or bona fide volunteer persons with passes which reduces their cost of entry and stay”,

it is intended that a further report will be submitted to Council at its July meeting, following technical discussions with the Consortium and parking manager.

45. The table below shows forecast budget details based on the 1 and 3 hour free models:

Waratah Private Hospital Car Parking - Impact on Decision for 3 Hours Free Parking

Current Arrangement - 2017 -18 Fees and Charges

1 Hour Free Parking

Per Annum

Income	70,000.00	
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Strata fees	265,000.00	
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OPEX	36,704.00	
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Secure Parking
management

Total expenses	301,704.00	
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Loss	-	231,704.00
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Proposed Arrangement – Draft 2018-19 Fees and Charges

3 Hours Free Parking with likely compensation payable to the Consortium

Income	20,000.00	
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Strata fees	265,000.00	
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OPEX	40,920.00	
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Metro Parking management
Estimate based on 2015-16
+ CPI

Compensation	114,000.00	
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Total expenses	419,920.00	
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Loss	-	399,920.00
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Options

46. The following options are available to Council for consideration:

- Option 1: Status Quo – No change to 1 hour free parking.
- Option 2: Investigate the possibility of having separate parking areas and operation. This would include installing separate boom gates and Council management of its spaces; Council rangers to provide infringement and enforcement; consortium applies no free parking, difficult to implement and costly amendment to stratum to consolidate car spaces.
- Option 3: Increase to 3 hours free parking - compensation will be payable to the consortium for extra 2 hours free parking - significant income reduction to Council, cost increase of approximately \$168,000 per annum including compensation to the Consortium.
- Option 4: Increase to 2 hours free parking - reduces compensation payable to approximately \$57,000 per annum. This option is unlikely to be agreed to by the consortium.
- Option 5: Investigate disposal of Council car spaces.

Financial Implications

47. Possible financial impacts are:

- Approximately \$50,000 decrease in revenue should free parking change from 1 hour free parking to 3 hours free parking.
- Approximately \$114,000 in compensation to the consortium should the free parking increase to 3 hours.
- Approximately \$57,000 payable in compensation to the consortium should the free parking increase to 2 hours free.
- It is acknowledged that pursuant to Clause 55(b) of the Contract for Sale neither party can confer upon the other its will in relation to the shared parking facility. With this in mind, there is the possibility of incurred legal expenses to Council from a legal challenge arising from parking arrangements not agreed to by both parties and certainly not negotiated in good faith.

Community Engagement

48. Community consultation has been conducted through the draft 2018/19 Budget (Fees and Charges) public exhibition period.
49. Only 1 submission was received (from the owners) in regard to the Waratah Hospital car parking rates. No other public submissions were received.

File Reference

D13/1543

ATTACHMENTS

Attachment 1 Minute 450 - Paid Public Car Parking (16 December 2009)

Attachment 2 Letter to Cortez - Paid Parking (dated 7/1/2010)

Attachment 3 COW060-09 - Paid Public Parking Within Medica Centre Building