

ITEM 10. OWNER'S CONSENT - SECTION 96 APPLICATION FOR "MX" NEWSPAPER DISTRIBUTION**FILE NO: S039245****SUMMARY**

On 1 August 2005, Council granted owner's consent for the lodgement of a Development Application by Nationwide News Pty Limited for the distribution of the "MX" newspaper. A development consent was granted on 26 September 2005 to distribute the publication Monday to Friday between 3pm and 7pm. A condition of the consent allowed the lodgement of a further Development Application before the expiration of the consent (26 March 2007) to permit the continued distribution of the newspaper for a further term.

In subsequent correspondence, it was agreed that the initial term of 18 months commence from the date of the Distribution Agreement. The City entered into a Distribution Agreement with Nationwide Pty Limited which commenced on 24 November 2005 for a term of 18 months, which expired on 23 May 2007.

Nationwide Pty Limited exercised the option on 2 February 2007 in accordance with the Distribution Deed and has lodged a Section 96 modification to the existing consent to continue the distribution activity.

To ensure that the distribution activities are not disrupted, the CEO has authorised the continuation of distribution during the assessment period of the Section 96 Application.

A separate report has been prepared for the Planning Development and Transport Committee that recommends approval for a further 18 months from the date of consent of D2005/929/A, subject to owner's consent. As part of the consent, Nationwide will be required to enter into a new Distribution Activities Deed.

It is noted that a further development application may be lodged before the expiration of the consent for Council's consideration for the continuation of the use for a further term in accordance with the "further term" provisions of the Distribution Activities Deed.

RECOMMENDATION

It is resolved that:

- (A) the City grant owner's consent to the section 96 modification to existing development consent by Nationwide Pty Limited for the continued distribution of the newspaper known as "MX"; and
- (B) the Chief Executive Officer be authorised to enter into a new Distribution Activities Deed with Nationwide Pty Limited on terms and conditions consistent with the development consent.

ATTACHMENTS

Attachment A: Resolution of Council 1 August 2005

Attachment B: Resolution of Council 22 August 2005

Attachment C: List of Sites.

Attachment D: Financial return from MX newspaper distribution (Confidential)

BACKGROUND

1. On 1 August 2005, approval was given by Council for the City to grant owner's consent to enable the lodgement of a Development Application by Nationwide News Pty Limited for the distribution of the newspaper known as "MX". (Refer Attachment A.)
2. Council also resolved that a draft policy to guide footpath distribution of newspapers, other printed material and other commercial activities on footpaths be developed. (Refer Attachment B.)
3. Development Consent D/2005/929 was subsequently granted on 26 September 2005 to Nationwide News Pty Limited to distribute the "MX" publication Monday to Friday between 3pm and 7pm. The Consent approved the distribution of the "MX" publication at 35 sites throughout the CBD area, together with 15 existing newsstand sites (50 locations). Nationwide Pty Limited has confirmed that they are currently distributing from only 19 sites. (Sites are shown at Attachment C.)
4. Condition 3 of the Development Consent requires that the use must cease after a period of eighteen months from the date of consent. A further Development Application may be lodged before the expiry for Council's consideration of the use for a further term, in accordance with the "further term" provisions of the Distribution Activities Deed.
5. As the consent lapsed on 26 March 2007, the Distributor has been allowed to continue to distribute the publication on a temporary arrangement until the Development Application can be assessed.
6. The City entered into a Distribution Agreement with Nationwide News Pty Limited effectively from 24 November 2005, for a term being 18 months, which expired on 23 May 2007. The agreement has an option period for a further 42 months.
7. Nationwide Pty Limited validly exercised its option on 2 February 2007 and has lodged a section 96 modification to the existing consent to continue distribution for a further term.
8. The section 96 modification seeks to continue the distribution of "MX" newspapers at the same locations and in the same manner as that approved by Council in 2005, except that the applicant has sought an increase in the period of consent from eighteen (18) months, which was granted in the original consent, to a period of sixty (60) months.
9. A separate report has been prepared for the Planning Development and Transport Committee that recommends approval for a further 18 months only from the date of consent of D2005/929/A, subject to owner's consent and conditions.
10. Subject to development consent, Nationwide will be required to enter into a new Distribution Deed on terms and conditions consistent with consent.
11. It is noted that a further development application may be lodged before the expiration of the consent for Council's consideration for the continuation of the use for a further term in accordance with the "further term" provisions of the Distribution Activities Deed.

12. The City's Policy for the Distribution of Printed Matter and Other Material on Footways permits, with approval, the distribution of publications on the footway provided:
 - (a) all distribution activity is to be secondary to maintaining the effectiveness of the footway for pedestrian movement;
 - (b) personnel involved in the distribution shall take all necessary steps to minimise inconvenience to pedestrian and vehicular traffic and occupants of premises in the vicinity of distribution locations; and
 - (c) the distribution activity does not involve any sale.
13. The current Distribution Agreement has similar provisions and, should Council agree to the continuation of the use, the new Agreement will reinforce the objectives of the Policy.
14. Enquiries with Nationwide News Pty Limited reveal that the company has received no complaints from the general public in regard to the distribution of printed material.
15. City Rangers have confirmed that there have been no major problems with the distribution, and the Property Unit has responded to only one complaint regarding rubbish associated with the distribution in November 2005.
16. Councillors, nevertheless, have raised some concerns regarding waste management and footpath accessibility.

FINANCIAL IMPLICATIONS

17. The distribution of the MX Newspapers is based on the City's Schedule of Fees and Charges. The total annual fees payable are outlined in confidential Attachment D.

RELEVANT LEGISLATION

18. The Roads Act 1993 and the Local Government Act 1993.

CRITICAL DATES / TIME FRAMES

19. Nationwide has requested owner's consent from the City to the Section 96 modification to the existing consent to continue the distribution activity as the current consent has lapsed.

PUBLIC CONSULTATION

20. The Policy for the distribution of printed and other matter on footways was placed on public exhibition for 6 weeks, between 23 April and 5 June 2007. The Discussion Paper was also presented to Council's Access Forum held on 26 April 2007. Two forums were held on 14 March and 4 May 2007 with representatives from the publishing industry and from other interested groups identified during the exhibition.

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