

**9.4.2 Lower Chittering Sport & Recreation Facility: Immaculate Heart College Self-Supporting Loan**

<b>Report date</b>	2 May 2019
<b>Applicant</b>	Shire of Chittering
<b>File ref</b>	A11560; 15/01/16
<b>Prepared by</b>	Acting Chief Executive Officer
<b>Disclosure of interest</b>	Nil
<b>Voting requirements</b>	Simple Majority
<b>Attachments</b>	Nil

**Executive Summary**

Following Council's April resolution, discussions have occurred with Immaculate Heart College (IHC) in regard to the principles of and security for, a Self-Supporting Loan Agreement.

Whilst the ideal security of some freehold College land with a caveat in the Shire's favour would be preferred from a risk perspective, such a requirement would limit the College's future borrowing capacity for its ongoing growth, and therefor potentially be self-defeating in the context of the College being more profitable, the larger it grows its student numbers. Whilst noting the inherent risk of any self supporting loan arrangement, in light of the fact that the asset is situated on Shire land, and that a portion of the ongoing operating costs will be met by the College, it is considered that the arrangements negotiated offers a suitable level of security for the loan funds provided by the Shire, in exchange for the College's contribution towards the Lower Chittering Sport & Recreation Facility.

The above discussions with the College have however drawn out that if the annual operating and renewal costs do reach the previously estimated level of \$400,000pa, then a 50/50 split may not be able to be accommodated by the College, at least for the next several years. It is possible therefore, that the Shire's annual costs may be higher than recently predicted.

**Background**

The Council at its 17 April 2019 Meeting, committed to using its best endeavours to bringing the Lower Chittering Sport & Recreation Facility project to realisation as soon as reasonably possible, in order that the Chittering community and the Immaculate Heart College students and families can benefit from the facility. Council also required that a workable and sustainable contract be developed for a self-supporting Loan to the College (up to \$2m) for its contribution to the Lower Chittering Sport & Recreation Facility, incorporating at least the following security conditions–

- a) A maximum sum of \$2,000,000;
- b) A suitable loan debt security;
- c) That any supplementary grants received by the College that link to its use of loan expenditure, are to be remitted to the Shire as "advance principle repayments" to be held in the Shire's Trust Account until it can be remitted to WA Treasury as such; and
- d) A preference for the \$275,000 land payment to be remitted in cash to the Shire upon transfer of the land, and a \$1,725,000 self supporting loan as the College's contribution to the Lower Chittering Sport & Recreation Facility; but endorses (if the College can adequately prove that option is unsustainable) that a \$2,000,000 self-supporting loan be provided and made up of two components, a contribution to the Lower Chittering Sport & Recreation Facility itself (\$1,725,000) plus the purchase price of the land (approximately 3ha) to be sold by the Shire to the Immaculate Heart College (\$275,000);

Immaculate Heart College is an incorporated Catholic school and classified as an Australian Public Company, Limited by Guarantee. A company limited by guarantee is a specialised form of public company designed for non-profit organisations. Companies limited by guarantee are subject to the Corporations Act 2001 (Cth) and administered to by the Australian Securities and Investments Commission (ASIC). Like incorporated associations, this legal structure designates an organisation as a separate legal entity. A company limited by guarantee can for example, be sued, legally lease a property, borrow money, enter into contracts, or hold assets in its name. Like many corporate structures however, a company limited by guarantee is only as financial as its current operations and the limit of the liability of the company's members. Immaculate Heart College Limited has the power within its Constitution to ... *"(g) to borrow, raise or secure the payment of money as the Company may think fit; to secure the same or the repayment or performance of any debt liability, contract guarantee or other engagement incurred or to be entered into by the Company in any way and in particular by mortgages or the issue of debentures perpetual or otherwise, charged upon all or any of the Company's property (both present and future), and to purchase, redeem or pay off any such securities."*

The Shire borrows its funds through WA Treasury and a "self supporting loan" is effectively a Shire loan that a third party (in this case the IHC) has agreed to meet the repayments for. WA Treasury sets limits for local government borrowings to guard against defaults, and to also manage the State's financial credit rating. Chittering has the capacity to borrow \$5m from the WA Treasury (\$3m for its contribution and up to \$2m as a Immaculate Heart College Self-Supporting Loan) but the Shire's ongoing authority to lift that borrowing level for other future projects may meet stricter Treasury application guidelines.

The Councillor representatives of the Lower Chittering Sport & Recreation Facility Reference Group, the CEO, and representatives from the Immaculate Heart College, met on Tuesday 30 April to discuss the principles of an Agreement between the Shire and the College. The agreed principles will then be developed into a formal Agreement that will bind the Shire and the College. The self-supporting loan through the Shire of Chittering is suggested to be on the following basis-

Details	Self-Supporting Loan Conditions
<b>Loan amount</b>	\$1,625,000  \$625,000 drawn down on 15 June 2020 (project due to be 30% complete); \$500,000 on 15 December 2020 (project due to be 60% complete; and \$500,000 on 15 March 2021 (project due to be 90% complete).
<b>Loan term</b>	20 years (15/06/2020 – 14/06/2040)
<b>Borrower Details</b>	Immaculate Heart College Ltd (ACN: 147 801 590)
<b>Loan repayments (at 3.65% interest)</b>	\$115,500pa (estimated)

Details	Self-Supporting Loan Conditions
<b>Loan Security Offered</b>	<p>By contractual agreement, the Immaculate Heart College will be responsible to service the loan's repayments.</p> <p>In the event of dissolution of the College, the full balance of the loan shall become payable.</p> <p>Annual Budgets, and End of Year Financial Statements to be provided to the Shire within 15 days of IHC Board endorsement (noting that some information contained within these documents might need to be acknowledging as being "business in confidence" information.</p> <p>\$275,000 cash payment for the land (portion of Lot 8017, Muchea East Road) to be made upon land transfer (and not be part of the loan).</p> <p>A \$100,000 cash contribution towards the Facility's capital costs is to be made on 15 June 2020.</p> <p>(Note: the above two cash payments effectively reducing the loan requirement from its initial \$2m expectation).</p>

The College's net assets were almost \$2.35m at 30 June 2017 and its budgeted end of year operating surplus position for 30 June 2019 is projected to be \$626,690 (note: "operating" does not include capital expenditure or \$23,208 in loan principal repayments).

The Immaculate Heart College Business Plan 2019 – 2024, incorporates a loan commitment for \$1.725m and outlines three scenarios. One is based on its original projected growth (415 students by 2024), one is based on a lower than projected growth rate (380 students), and one is based on a higher student fee growth rate than originally projected scenarios (all options are inclusive of the self supporting loan repayments). The least optimistic of the above three scenarios predicts a (generally) continuously annually improving operational result, from \$626,690 (2019) to \$1,325,013 (2024) with net assets continuously increasing from \$2,661,530 (2019) to \$10,715,234 (2024). The minimum cash-on-hand position at the end of each of the six financial years is \$405,777 (2021) and the greatest is \$997,983 (2024).

As part of the Self Supporting Loan discussions, the matter of ongoing operational costs were discussed. Whilst ongoing operational costs are not relevant to the loan itself, the fact that those discussions led towards the potential of the Shire's operating costs rising beyond previous expectations is however a situation warranted to be drawn to Council's attention. By way of history, the proposal put forward with the grant application was that the operational and renewal costs were to be split between the Shire and the IHC. An exact calculation methodology for that "split" was never finalised, but the April 2019 Council Meeting resolving that the ongoing sharing of operational costs are to be based on the following principle - .... *to share up to 50% of the Operation / Maintenance costs of the Lower Chittering Sports Facility in consideration of payment of a-*

- a. *Fixed annual costs of 25% of the Operation / Maintenance costs of the Lower Chittering Sports Facility, regardless of use; and*
- b. *Variable annual cost of up to 25% of the Operation / Maintenance costs of the Lower Chittering Sports Facility based on percent use of the school.*

The above Council resolution does not in itself require that the College immediately meet 50% of the costs, however it is an indication to the Reference Group (which is charged with the responsibility to develop a workable cost share model between our two organisations) of the direction desired.

Discussions with IHC in regard to the loan indicate that (at least for the next several years) if the College is required to make a 50% contribution towards operational costs, and if that cost share is in the range of the estimated \$200,000pa, it will not be able to meet that cost and either a lower cost operating budget would be required, or some form of alternative style of contribution would need to be found (like a "phased in" contributions, a "user pays" methodology, or a system where the College contracts with the Shire to undertake some of the operational work, like arranging cleaning/gardens/ovals works, etc.). For the point of these loan considerations, it would be prudent therefore for Council to be cognisant of the potential that the College's operational costs contribution might for at least the first several years, be more in the order of third of the total operating costs, than half.

### **Consultation/Communication Implications**

#### Local

Immaculate Heart College.

McLeods – Barristers & Solicitors

Councillor representatives of the Lower Chittering Sport & Recreation Facility Reference Group.

#### State and Federal

Nil

### **Legislative Implications**

#### State/Federal

If self-supporting loan funds are required, that loan will be accessed through WA Treasury. There is no other know legislation applicable (with the Self Supporting Agreement being completed under the authority of the WA Local Government Act 1995).

#### Local

- *Local Government Act 1995* S6.20 outlines the power of the local government to borrow funds.
- *Local Government (Financial Management) Regulations 1996* (Reg 29) outlines regulations relating to borrowings information required in accounting notes.

### **Policy Implications**

#### State

Nil

#### Local

Nil

### Financial Implications

The Immaculate Heart College commitment is \$1.625m and is suggested to be provided in three separate draw-downs, namely, \$625,000 on 15 June 2020 (project due to be 30% complete); \$500,000 on 15 December 2020 (project due to be 60% complete; and \$500,000 on 15 March 2021 (project estimated to be 90% complete). This should provide an equitable contribution towards the cash-flow requirements of the project.

The financial impact of this loan on the Shire is planned to be \$nil, with the IHC meeting all of the Shire's loan costs for the \$1.7625m self supporting loan. However, the financial impact of any operational costs contribution of a proportion less than 50% will adversely impact upon the Shire's financials. If total costs eventuate to be in the order of \$400,000 and the IHC's contribution towards that is not \$200,000 but is in the order of \$100 - 150,000 then the Shire's contribution will rise by the equivalent gap (vis. \$50 - 100,000). Noting of course that this Facility operation cost is an estimate and is yet to be confirmed by actual costs.

### Strategic Implications

#### Local

- Strategic Community Plan 2017-2027

Focus area: Our community

Objective: S1.1 An active and supportive community

Strategy: S1.1.1 Develop and enhance existing recreation and social facilities for local communities (recreational and sporting facilities to service the growing population in the Lower Chittering/Muchea area)

#### State

Nil

### Site Inspection

Not applicable

### Triple Bottom Line Assessment

#### Economic implications

The Shire may have a lower ongoing borrowing capacity at Treasury if it provides a self-supporting loan to the Immaculate Heart College.

#### Social implications

On the basis that the project proceeds, there will be positive social and health benefits associated with sporting and recreation facilities to service the growing population in Lower Chittering.

#### Environmental implications

Environmental implications (if any) will be dealt with as part of the planning and building approval process.

### Officer Comment/Details

Discussions have occurred with Immaculate Heart College in regard to the principles of a Self Supporting Loan Agreement. The preference of securing some freehold College land via a caveat in the Shire's favour was proposed as the preferred risk mitigation strategy, however the College outlined that such a requirement would limit its future borrowing capacity for its proposed infrastructure growth.

Whilst the College's potential growth need not restrict the Shire from demanding such a level of loan security, if that demand were to result in the restriction of the College's growth potential, such a requirement might potentially be self-defeating (in the context that restricting the College's student growth might similarly restricting its potential to be more profitable and more ably meet ongoing loan repayments and operational costs).

The existing financials for the Immaculate Heart College are positive, and its Business Plan (2019 – 2024) incorporates the proposed self supporting loan commitment. The Business Plan indicates a capacity to meet the loan repayment commitments, but does highlight that its capital development plan may need to be reviewed downwards should the number of students fall; or capital income/donations/grants not eventuate (in which case loans would need to be secured to enable those capital projects to progress as projected).

Notwithstanding that the eventual operational cost for this Facility cannot be confirmed by actual costs until well after it has been constructed, there would seem to be at least the potential of a negative financial impact on the Shire in regard to its previous expectations of equally shared operational costs. Again, that figure is also unknown, but could be in the order of \$50 - 100,000pa. It is not insignificant (representing 1 – 2% of rates) but by the same token is not insurmountable either as the cost will not eventuate until 2021/22 and can therefore be planned for.

In conclusion therefore, and in light of all of the risks and circumstances, suitable loan conditions are considered to have been secured, particularly as the loan is now reduced to just above 80% of the original expectation; the asset will provide a community service, be situated on Shire land and be controlled by the Shire; and it will have a portion of its ongoing operating costs met by the College.

9.4.2 OFFICER RECOMMENDATION / COUNCIL RESOLUTION 080519

Moved Cr Tilbury / Seconded Cr Osborn

That Council:

1. Authorises the Chief Executive Officer to finalise a Self Supporting Loan Agreement with Immaculate Heart College Ltd, incorporating the following principles:
  - a. A loan sum of \$1,625,000;
  - b. \$625,000 drawn down on 15 June 2020; \$500,000 on 15 December 2020; and \$500,000 on 15 March 2021;
  - c. Loan term to be 20 years (15 June 2020 – 14 June 2040);
  - d. Immaculate Heart College to service the loan's repayments (all payments to be received on or prior to the respective loan repayment date);
  - e. In the event of dissolution of the College, the full balance of the loan shall become payable; and
  - f. The College's Annual Budget, and End of Year Financial Statements are to be provided to the Shire annually and within 15 days of IHC Board endorsement.
2. Notes that:
  - a. The \$275,000 payment for the land is to be made to the Shire of Chittering upon transfer of the land (and will not be part of the loan); and
  - b. A \$100,000 cash payment is to be made on 15 June 2020 by Immaculate Heart College as a capital contribution towards the Lower Chittering Sport & Recreation Facility.

CARRIED 4/3  
8:49PM