

Advice Note

Responsible Officer:	Chief Executive Officer
Date of Meeting:	22 September 2020
Meeting of the:	Ordinary Meeting of Council
Item:	M20/5770 Melville Bowling Club Inc New Lease & Petition Amendment Motions Proposed By Cr Matthew Woodall dated 18 September 2020.

DETAIL

Amendment 1

That the Council amend the City's Lease as attached to the Officer Recommendation by inserting the following words at the end of clause 5.6(c):

“, including but not limited to gambling, betting, wagering or gaming except as set out under sections 103, 107 and 108 of the Gaming and Wagering Commission Act 1987.”

Amendment 2

That the Council amend the City's Lease as attached to the Officer Recommendation by inserting a new sub-clause 7.2(e) as follows:

“(e) the Lessee's membership is below 100 for a period of no less than 12 months,”

Amendment 3

That the Council amend the City's Lease as attached to the Officer Recommendation by inserting a new sub-clause 7.2(f) as follows:

“(f) the Lessee undergoes:

- (i) an amalgamation;
- (ii) transfer/conversion to a company or Co-operative; or
- (iii) a significant change in its objects or purpose.”

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Amendment 4

That the Council amend the City's Lease as attached to the Officer Recommendation by renumbering the existing clause under clause 10 in the Proposed Lease to sub-clause 10.1, and insert a new sub-clause 10.2 as follows:

"Notwithstanding any other clause in this Deed and to the maximum extent permitted by law, the Lessor's maximum aggregate liability to the Lessee, whether arising at law, in equity, under contract, under statute, in tort, or otherwise, shall be limited to an amount equal to the Rent payable during the year in which the liability arose."

Officer Comment Amendments 1 and 4

Offices have no comment to make on Amendments 1 to 4, these are matters for the Council to consider.

Amendment 5

That the Council amend the City's Lease as attached to the Officer Recommendation by inserting a new clause 14 as follows:

"The Lessee acknowledges:

- (a) In the event the Lessor should at any time on or after ten years of the Term of the Lease wish to repurpose the Premises, then the Lessor may terminate this Lease on five years written notice to the Lessee ("the Termination Notice").
- (b) In the event the Lessor issues a Termination Notice to the Lessee, the parties agree the following will apply:
 - (i) at the expiration of the Termination Notice, the Lessee must vacate the Premises and deliver up vacant possession in accordance with the requirements of clause 5.14; and
 - (ii) prior to the expiration of the Termination Notice, the Lessor must use reasonable endeavours to provide suitable alternative Premises for the Lessee. No other compensation or consideration shall be payable to or claimable by the Lessee from the Lessor for or arising out of the termination of the Lease.
- (c) A written notice signed by or on behalf of the Lessor shall be full and sufficient evidence of the fact that the Lessor is repurposing the Premises.
- (d) In the event that the Western Australian Government requires redevelopment of the land that is the subject of this Lease, the Lessee acknowledges that the City of Melville will be required to observe any notice period advised by the Western Australian Government that may not provide a Termination Notice period as detailed in 14.1(b) above.

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Amendment 6

That the Council amend the City's Lease as attached to the Officer Recommendation by inserting a new clause 14 as follows:

"The Lessee acknowledges:

(a) In the event the Lessor should at any time on or after twenty years of the Term of the Lease wish to repurpose the Premises, then the Lessor may terminate this Lease on five years written notice to the Lessee ("the Termination Notice").

(b) In the event the Lessor issues a Termination Notice to the Lessee, the parties agree the following will apply:

(i) at the expiration of the Termination Notice, the Lessee must vacate the Premises and deliver up vacant possession in accordance with the requirements of clause 5.14; and

(ii) prior to the expiration of the Termination Notice, the Lessor must use reasonable endeavours to provide suitable alternative Premises for the Lessee. No other compensation or consideration shall be payable to or claimable by the Lessee from the Lessor for or arising out of the termination of the Lease.

(c) A written notice signed by or on behalf of the Lessor shall be full and sufficient evidence of the fact that the Lessor is repurposing the Premises.

(d) In the event that the Western Australian Government requires redevelopment of the land that is the subject of this Lease, the Lessee acknowledges that the City of Melville will be required to observe any notice period advised by the Western Australian Government that may not provide a Termination Notice period as detailed in 14.1(b) above.

Officer Comment to Amendments 5 and 6

The Officers have suggested a new clause 14 amendment as per the email to all Elected Members on Monday 21 September 2020 and sent and discussed last week with the Mayor and Councillors Sandford and Woodall. The proposed Officer amendment, which is circulated separately, incorporates provisions that are mutually protective of the rights of the Lessor and Lessee, first by mutual agreement and failing that by external adjudication.

Amendment 7

That the Council amend the City's Lease as attached to the Officer Recommendation by inserting a new clause 15 in the Proposed Lease as follows:

"15. Redevelopment

15.1 The Parties acknowledge that the Lessee intends to redevelop the Premises at its own cost.

15.2 The Parties agree to meet and discuss any redevelopment proposal in good faith.

15.3 Notwithstanding clause 15.2 above, any proposal by the Lessee to redevelop the Premises shall be subject to the City's consent, which may be given or withheld in the City's absolute and unfettered discretion.

Officer Comment

In relation to Amendment 7 it is noted that at this point in time no redevelopment proposal has been submitted to the City by the Melville Bowling Club and that if a future proposal is presented and approved by the lessor the lease agreement can be amended or replaced if required. Additionally, provisions relating to any alterations to the Premises by the lessee are addressed in Clause 5 of the Lease.

SIGNATURE: