

**LATE ITEM M20/5770 – MELVILLE BOWLING CLUB INC. NEW LEASE AGREEMENT AND PETITION (CONFIDENTIAL ATTACHMENT) (REC)**

Ward	:	Bicton/Attadale
Category	:	Strategic
Subject Index	:	Community
Customer Index	:	Melville Bowling Club Inc.
Disclosure of any Interest	:	No Officer involved in the preparation of this report has a declarable interest in this matter.
Previous Items	:	Item 16.4 Motion with Notice – Melville Bowling and Recreation Club – Lease Agreement – 21 and 22 July 2020 Ordinary Meeting of Council Item 13.1 Petition – Rescind Council Decision to grant 50 year Lease to Melville Bowling Club – 18 August 2020 Ordinary Meeting of Council
Works Programme	:	Not Applicable
Funding	:	Not Applicable
Responsible Officer	:	Marten Tieleman – Chief Executive Officer

**AUTHORITY / DISCRETION**

**DEFINITION**

<input type="checkbox"/>	Advocacy	<i>When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input checked="" type="checkbox"/>	<b>Executive</b>	<b><i>The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i></b>
<input type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes &amp; policies.</i>
<input type="checkbox"/>	Review	<i>When the Council operates as a review authority on decisions made by Officers for appeal purposes.</i>
<input type="checkbox"/>	Quasi-Judicial	<i>When the Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (e.g. under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>
<input type="checkbox"/>	Information	<i>For the Council/Committee to note.</i>

**LATE ITEM M20/5770 – MELVILLE BOWLING CLUB INC. NEW LEASE AGREEMENT AND PETITION (CONFIDENTIAL ATTACHMENT) (REC)****KEY ISSUES / SUMMARY**

- At the 21 July 2020 Council Meeting the Council resolved to grant the Melville Bowling Club Inc. a new lease at the existing club location at 592 Canning Hwy, Alfred Cove for an initial term of 50 years.
- The decision by Council further directed the CEO to conclude negotiations, sign and execute a lease agreement for the site and clubrooms with the Melville Bowling Club within 28 days (by 18 August 2020) for an initial term of 50 years, with other terms to be agreed, and, if not agreed, to be decided by Council by no later than the September 2020 Ordinary Meeting of Council (15 September 2020).
- A signed petition from 159 residents and 7 non-residents of the City of Melville was received on 13 August 2020 and presented to the Council at the 18 August 2020 meeting. The petition that is considered in this report, requested that the Council rescind the decision to grant a 50 year lease to Melville Bowling Club.
- The Club provided a copy of the City's standard lease agreement that was significantly modified. A legal opinion was obtained relating to the implications of the amendments made to the lease, which sited significant concerns for the City.
- The CEO and the President of Melville Bowling Club were unable to come to agreement on essential lease terms in the agreement and in accordance with Council's decision the recommended lease is hereby brought back to Council for a decision.
- A copy of the confidential legal opinion and the City's recommended Lease Agreement are provided.

**BACKGROUND**

On 21 July 2020 Council Meeting, a Motion with Notice was presented and supported by the Council. The motion is as follows:

*"That the Council directs the Mayor and Chief Executive Officer to conclude negotiations, sign and execute a lease agreement for the site and clubrooms with the Melville Bowling and Recreation Club within 28 days for an initial term of fifty years, with other terms to be agreed, and, if not agreed, to be decided by Council by no later than the September 2020 Ordinary Meeting of Council"*

A discussion was held between the Acting CEO and the President of the Melville Bowling Club on 3 August 2020. The Acting CEO advised the President that:

- The resolution from Council on 21 July 2020 requires the CEO and Mayor to negotiate the initial lease within 28 days. The 28 days ends on the 18<sup>th</sup> of August which is the August Ordinary Council meeting night.
- The City will work on a report for that Council meeting which meets this requirement.
- New lease terms and conditions proposed by the Melville Bowling Club were outside the normal acceptable lease arrangements the City has with similar sporting and recreation clubs. Ultimately it will up to Council to determine their position in regard to these terms and conditions subject to advice from the City's CEO and solicitors.

A final draft lease with amendments was presented by the Club on 4 August 2020.

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The CEO wrote to the President of the Melville Bowling Club on 11 August 2020 detailing the terms and conditions proposed by the Club which the City could not accept and the reasons why the City could not accept the proposed amendments.

In addition, the City sought legal advice from its solicitors to review the lease agreement amendments proposed by the Club.

On the 12 August 2020 the Club advised that they did not agree to the comments and changes proposed by the City. The Club attached a Deed of Extension and Variation of the Lease which they were willing to sign. This was contrary to the Council resolution and the existing lease had expired and was in a holding over period and could not be varied.

The Club wrote to the CEO on 13 August 2020 and requested the CEO to not unduly delay the signing of the lease by obtaining legal advice. The President also indicated he was happy to meet prior to the 18 August to sign their Deed of Extension and Variation of lease.

The legal opinion received on Friday 14 August 2020, strongly supported the City's position not to accept the Club's proposed amendments.

A copy the confidential legal advice (confidential attachment) and the draft lease proposed by the City [5770 COM Final Lease Subject to Solicitors Review](#) are attached. A legal review of the City's draft lease has not been undertaken at this stage, as it is considered direction from the Council should be obtained before further legal expenditure is incurred.

Elected Members were provided with an update of the negotiations in the Elected Member Bulletin of 21 August 2020.

**DETAILS****Petition – Rescind Council Decision to Grant 50 Year Lease to Melville Bowling Club**

A petition received on 13 August 2020 requested the Council to rescind the Council decision of 21 July 2020 to grant a 50 year lease to the Melville Bowling Club (MBC) and replace it with a new terms & conditions, as follows:-

1. *The term of the lease to be determined by the professionally qualified staff of the City, but be no longer than 10 years in duration.*
2. *All other lease conditions to be determined by the city's staff, within a reasonable time frame as stipulated by the staff, to ensure the conditions provide benefit consistent with other similar clubs & sporting organisations.*
3. *Noting support provided to Mayor Gear by the Melville Bowling Club during the October 2019 Local Government Election & his ongoing membership with the Club, the Mayor acknowledges his interest, leaves the Chamber during the debate & refrains from voting on this item.*
4. *All other Elected Members duly re-consider their own interests and, where appropriate, leave the Chamber during the debate & refrain from voting on this item.*

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In order to consider the petition the Council may wish to give consideration to parts 1 and 2, however, parts 3 and 4 of the petition do not relate to terms and conditions of a lease. These are matters for the Mayor and each Elected Member to seek advice, if required and to determine if they have any conflict of interest in a matter and declare accordingly.

In relation to part 1 of the petition the Council could rescind the decision from the 21 and 22 July 2020 Meeting and offer the Club and lease with an initial term of 10 years with a further option of 10 years, to be consistent with other non commercial City leases and licences.

Part 2 of the petition is addressed in this report as the draft lease presented to the Council for consideration, and has been prepared following the receipt of independent legal advice and is based on the City's standard lease document for non-commercial entities.

**Lease Agreement Terms Not Agreed Between the City and Melville Bowling Club**

The City recognises that the Club has operated continuously from its current home at 592 Canning Highway for over 60 years and that guaranteeing secure tenure on the site is critical for the Club's future and aspirations. By agreeing to a new lease with the Club, the City is required to ensure that the lease agreement is consistent both in format and with legal effect with the City's other sporting club and association lease agreements.

The City's lease agreements are prepared by and on advice from the City's solicitors to ensure the City retain legal rights and protection over its assets, as landlord, and complies with its statutory obligations and duty of care for its residents and ratepayers.

The City has reviewed the Club's proposed amendments to the City's standard lease agreement and whilst the Club's motivation for the proposed amendments is acknowledged, the proposed amendments made by the Club are not recommended for the following reasons:

**1. Alterations (Clause 5.4)**

The City as Lessor cannot provide consent to the building of new premises on the land without first seeing the plans and proposal as the City has a responsibility as owner of the land to ensure it is satisfied with and agrees to these plans. It would be irresponsible for the City to agree to something for which it has no knowledge of the details. There is a community expectation that the Council will ensure such oversight.

**2. Signs (Clause 5.7)**

The City is required to retain control, via consent, over the approval to erect or exhibit signage on all building and land assets subject to lease by the City. This is a safety net to prevent the use of the City's public owned property from being used for inappropriate purposes outside the uses permitted under the lease.

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3. **Redevelopment (Clause 14.1)**  
Whilst the City has no current or future plans to redevelop the Melville Bowls Club leased premises, the City requires this clause to be retained in the lease agreement to allow for the contingency should the City's plans for the premises change after the lease term has expired.
4. **Car-parking License (Schedule 1 Item 12)**  
The existing public carpark adjacent the Melville Bowls Club lease area is available to the public and is provided to meet the needs of, not only the Club members but also, other sporting clubs at Tompkins Park and the general public. By agreeing to grant a license to the Club over this car park would in effect grant exclusive use rights to a public asset and this could deny the public from free access to the parking amenity.
5. **Financial Reporting Obligation By Lessee**  
It is in the interest of openness and transparency that the City requires the Club (as with all clubs and associations who lease public assets from the City) to provide annual financial reports to the City to enable it complete its annual due diligence functions on City owned assets. This is also in the interest of the Lessees which ensures the City is in a position to consider financial assistance to Clubs and Associations that may require it from time to time during the lease term.

Other associated matters include:

- The Lease Area within the portion of Lot 39, designated in the former Deed of Lease dated 1 July 2012 between the City and the Melville Bowls Club will apply to the new lease agreement. The area of public parking to the east of the Club will remain outside the Lease Area and will not be made subject to an irrevocable license to the Club for the term of the lease.
- As the proposed new lease is for the purpose of Bowls Club and the Club is an incorporated association, the City will not charge the Club annual rent under the lease. Instead, the City will apply an Annual Administration Fee payable by the Club under the lease agreement. The current annual administration fee is \$681 excluding GST and is reviewed by City in its Annual Budget approved by Council and is indexed to the annual CPI change.

The Club was advised of the above by letter dated 11 August 2020. In the letter of response from the Club dated 12 August 2020 the Club commented on the City's position on the proposed amendments and at that point agreement could not be reached.

**LATE ITEM M20/5770 – MELVILLE BOWLING CLUB INC. NEW LEASE AGREEMENT  
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Not Applicable

**II. OTHER AGENCIES / CONSULTANTS**

Not Applicable

**STATUTORY AND LEGAL IMPLICATIONS**

A legal opinion has been obtained in relation to the lease presented by the Club. The Council should consider the legal opinion in its deliberations on this matter.

Elected Members also need to consider whether or not they have a declarable interest financial, proximity or impartiality in this matter.

**FINANCIAL IMPLICATIONS**

Costs to date have been incurred on the legal review of the lease presented by the Club and it is recommended that the City's draft lease be further reviewed by the City's external legal advisors prior to being forwarded to the Club for signing.

**STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS**

The Melville Bowling Club's proposed terms represented both a significant departure from the standard terms which the City adopts for all of its other sporting and recreational club leases. It also represents a significant risk to the City in relation to its ability as land owner and lessor to control the land use by the Melville Bowling Club. In essence, if the City accepted the Club's proposed lease terms, it would be akin to granting the Club freehold and redevelopment rights to the land for 99 years.

**POLICY IMPLICATIONS**

The City has delegated to the CEO the functions in relation to the leasing of properties (DA-007 Leasing/Licensing of Property). The delegation is limited to the *"disposal of an interest in land/property by leasehold or licence or a hire agreement to an annual property rental value of \$100,000 per annum (excl. GST) and a maximum lease term of ten years."*

*Sub-delegation is limited to disposal of property by way of lease/licence or hire agreement to a value of \$50,000 per annum (excl. GST) and a maximum term of five years."*

The Council resolution to offer a 50 year lease, takes this matter outside of the scope of that delegation.

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Alternative options for the Council are to:

- Continue with the existing expired lease on a holding over basis as currently exists. This is not supported as a decision on the future use and leasing of the site is required.
- Support the Part 1 and/or Part 2 of the 13 August 2020 petition that:
  - 1 *The term of the lease to be determined by the professionally qualified staff of the City, but be no longer than 10 years in duration.*
  - 2 *All other lease conditions to be determined by the City's staff, within a reasonable time frame as stipulated by the staff, to ensure the conditions provide benefit consistent with other similar clubs & sporting organisations.*
- Support the terms and conditions as presented by the Club. This option is not supported based on the independent legal advice received.
- Determine the specific terms and conditions to be included in the lease.

It should be noted that if an alternative options is supported Regulation 11(da) of the *Local Government (Administration) Regulations* requires that the minutes of meeting include written reasons for a decision that is 'significantly' different from the relevant written officer recommendation. This requirement does not apply when a recommendation is 'noted' or returned for further consideration.

**CONCLUSION**

The obtaining of legal advice and the final agreement of the terms and conditions to the lease could not be achieved within the instructions as per the Council resolution from the 21 and 22 July 2020 Ordinary Meeting of Council. The advice sought by the CEO from the City's senior officers and confirmed by the City's solicitors affirms the City's draft lease terms and conditions.

As the Club and the City could not agree the terms and conditions of the lease, the CEO was unable to conclude the lease negotiations by the 18 August 2020 as per the Council resolution. In accordance with the resolution it is now for the Council to decide the terms and conditions of the lease to the Melville Bowling Club.

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**LATE ITEM M20/5770 – MELVILLE BOWLING CLUB INC. NEW LEASE AGREEMENT  
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1. Notes and considers the petition requesting Council to rescind its previous decision on 21 July 2020 to grant a 50 year lease term to Melville Bowling Club, and advises the lead petition of this resolution.
2. Notes the privileged and confidential legal advice from MinterEllison in relation to their review of the proposed lease and terms requested by the Melville Bowling Club Inc. as per the confidential attachment 1.
3. Directs the Chief Executive Officer to, after having submitted the lease to the City's legal advisors for a final review, present the City's Lease Agreement 5770 COM Final Lease Subject To Solicitors Review to the Melville Bowling Club for signing.

**ATTACHMENTS**

City of Melville (Lessor) and Melville Bowling Club Inc. (Lessee) Deed of Lease for the Portion of Lot 39, 592 Canning Highway, Alfred Cove.

**CONFIDENTIAL ATTACHMENT**

Privileged and Confidential Review of Proposed Lease to Melville Bowling Club by MinterEllison dated 14 August 2020.