

## OFFICER AMENDMENT

<b>Name of Officer:</b>	Chief Executive Officer
<b>Date of Meeting:</b>	22 September 2020
<b>Meeting of the:</b>	Ordinary Meeting of Council
<b>Item No.</b>	M20/5770 Melville Bowling Club Inc. New Lease & Petition
<b>Title of Item:</b>	Proposed Amendment Motion By Cr Matthew Woodall dated 18 September 2020

### PROPOSED AMENDMENT:

- 1. Insert as a recital 'A,B and C' of the recital, as per the lease attached to Cr Sanford's Amendment Motion, to the lease attached to the Officer's Report and number the existing recital 'D';**
  - A. On or about 1 July 2012 the Lessor and Lessee entered into a Lease Agreement for Premises being a Clubhouse and Bowling Greens at Lot 39, 592 Canning Highway, Alfred Cove.***
  - B. The Lessor granted the lease to the Lessee for an initial term of 5 years commencing on 1 July 2012 and expiring on 30 June 2017 with an option for a further extension of 2 years at the Lessor's discretion.***
  - C. On the expiry of the Lease term on 30 June 2017 the Lessor granted the Lessee an ongoing monthly tenancy***
  - D. Subject to certain approvals and consents being obtained, the Lessor has agreed to lease the Premises to the Lessee and the Lessee has agreed to take the Premises on lease from the Lessor upon and subject to the provisions of this document.***
- 2. At clause 2.1(b) amend '3 months' to read '6 months';**
- 3. At clause 2.2, the period to be '14 days';**
- 4. At clause 5.2(a) the following words to be deleted, 'which consent the Lessor may in the Lessor's absolute discretion refuse without assigning any reason';**

5. At Schedule 1, Item 6 to be replaced with the purpose as it currently appears in the 'holding over lease':  
*'To encourage and increase participation in lawn bowls, indoor bowls and other recreation activities and to promote good fellowship amongst members and undertake other community activities'*

## 14 REDEVELOPMENT

### 14.1 Lessee Acknowledgement

The Lessee acknowledges:

- (a) The Lessor may redevelop the Premises and such redevelopment may occur during the Term of the Lease, subject to mutual consent and the Lessor and Lessee acting reasonably and providing the appropriate Termination Notice with the timeframe prescribed in clause 14.1(b). Should the Lessor and Lessee fail to reach mutual consent to terminate this Lease within a period of 14 days from commencement of discussions, then clause 12.6 of this agreement will apply and the dispute will be referred to final binding arbitration
- (b) In the event the Lessor should at any time on or after ten years of the commencement of the Term of the Lease wish to redevelop the Premises, then the Lessor may terminate this Lease on five years written notice to the Lessee ("the Termination Notice")
- (c) In the event the Lessor issues a Termination Notice to the Lessee, the parties agree, subject to (a) above, 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 5.15 and
  - ii. a certificate signed by or on behalf of the Lessor shall be full and sufficient evidence of the fact that the Lessor is redeveloping 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.

**REASONS for inclusion of a New Clauses 1-5 (Inconsequential Clauses):**

Further to an email circulated to Elected Members on 21 September 2020 by the Executive Manager Governance and Legal Services the Officer Amendments numbered 1 to 5 to the draft lease, as presented as attachment to Council Item M20/5770 on 15 September 2020, are considered inconsequential however, in the interests of transparency, these amendments are submitted by the CEO to Council for consideration to be adopted by Council Resolution and included in the draft lease.

**REASONS for inclusion of a New Clause 14 (Redevelopment Clause):**

At the meeting on the 15 September 2020 the Council resolved an amendment that the redevelopment Clause in its existing form, not be included in the amended proposed lease.

**3.2. Redevelopment (Clause 14.1)**

**That Clause 14 in the City's Lease not be included in the attached amended Proposed Lease.**

The substantive motion, with this amendment was not considered by the Council prior to the adjournment of the meeting. The Officers recommend that a new Clause 14 be inserted to replace the redevelopment Clause 14 proposed to be deleted by the carried amendment. The new Clause to read:

1. The clause would enable the commencement of constructive discussions between the Lessor and Lessee in the event that any refurbishment; fit for purpose or any other necessary works would prove to be required;
2. The clause takes into consideration that there needs to be agreement between the parties and that the rights of both parties are to be reasonably considered;
3. The clause further provides for external adjudication in the event of a failure to reach agreement on any reasonable consideration such as, but probably not limited to, tenure; use of the facilities after the works are completed; interim arrangements and the like;
4. This clause is similar in provisions to that used by the State Government in settling a long lease with a sports body and looks to satisfy protection requirements of the Lessor (owner of the premises) and the Lessee (occupier and use beneficiary).

**SIGNATURE:** \_\_\_\_\_

**\*\* Please circulate to all Members of the Council, preferably a few days prior to the meeting, or on the night, and pass a copy of this form to the officer recording the minutes of the meeting. \*\***