

Advice Note

Responsible Officer:	<u>Strategic Property Executive</u>
Date of Meeting:	<u>21 July 2020</u>
Meeting of the:	<u>Council</u>
Item:	<u>16.4 Notice with Motion – Melville Bowling and Recreation Club - Lease Agreement</u>

DETAIL

Cr Barton has submitted a Notice of Motion that:

That the Council directs the Mayor and the 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.

BACKGROUND

The Director of Community Development at the City of Melville received a letter dated 19 February 2020 from Mr T Smith President of the Melville Bowling and Recreation Club (Melville Magic) seeking a renewal of the club's five year lease dated 1 July 2012 which expired on 30 June 2017 and has subsequently since then been held over on a month by month basis in accordance with clause 13.2 of the lease deed.

An amended proposed lease was then received on the 3 July 2020, however the identified key terms of the lease remained as follows:

The following lease terms were proposed by the Melville Bowling & Recreation Club in the President's letter to the City dated 19 February 2020:-

1. Tenant (Lessee) – Melville Bowling & Recreation Club (ABN 46 705 230 652)
2. Subject Land – Lot 39, 596 Canning Hwy Alfred Cove Vol 1185 Folio 584 (Freehold)
3. Lease Area Size - 3.67Ha (Refer to attached plan area in red)
4. Type of Lease – Ground Lease with all buildings the responsibility(owned) by the tenant including any improvements and maintenance costs
5. Zoned – Parks and Recreation under LPS 6 and MRS
6. Premises – Club House and Bowling Greens situated on Lot 39
7. Commercial Tenancy(Retail Shops) Agreements Act 1985 to apply



- a. Guarantees – None
 - b. Rental Security Bond - None
 - c. Lease Term – 50 Years
 - d. Option Term – 49 Years (At the sole discretion of Lessee)
 - e. Rent (Lease) Annual Payment Amount \$100 (Fixed)
 - f. Rent Reviews – None over the life of the lease
 - g. Lessee granted right to sub-lease the premises
 - h. Permitted Uses – As per existing Parks & Recreation Zoning including:-
Licensed Bar, TAB, Restaurants, Function and Conference Centres and Office
Uses
8. Lessee to be granted an irrevocable Car Parking License for the term of the lease over the existing public carpark adjoining the eastern boundary of the Premises with the City responsible for all maintenance. The City Of Melville (CoM) is in the process of formulating a “Land Exchange Strategy” around identified Crown Reserves which may be surplus to State Government needs
9. Landlord to provide undertaking to the Lessee that the portion of Crown Reserve adjoining Lot 39 to the north adjacent to the River will not be leased, developed or have improvement structures placed on the site

Meetings were held between the City and the Club President to discuss the terms proposed by the Club. In addition, the City provided the Club with a copy of the standard Deed of Lease applicable for sporting clubs and recreational associations.

ADVICE

The proposed lease terms by the Club have been considered by the City and do not align with the terms applied to other bowls clubs and sporting clubs which lease City owned assets. The proposed terms are excessive for a lease of this nature and if agreed, effectively represent the equivalent of the transfer of freehold ownership of land and buildings to the Club at no cost.

In addition the City's Chief Executive Office has delegation limits applicable to the Leasing and Licensing of City assets under DA-007. Under the delegation authority extends to a maximum lease/license terms up to 10 years with an annual rental or license fee payment not exceeding \$100,000 p.a.

Further, any proposed new lease has minimum statutory requirements that need to be complied with before being approved which includes:-

1. Lease must to be registered at Landgate. The Transfer of Land Act 1893 (TLA) provides for the registration of a lease under the operation of the TLA for any term (excluding options to renew) exceeding three years for freehold land or exceeding 12 months for Crown land.
2. New Lease disposal requires public consultation. Section 3.58 of Local Government Act 1995 – Disposing of property. **Dispose** includes to sell, lease, or otherwise dispose of, whether absolutely or not;
 - o S 3.58 (3) A local government can dispose of property other than under subsection (2) if, before agreeing to dispose of the property –
 - It gives local public notice of the proposed disposition –



- *Describing the property concerned; and*
 - *Giving details of the proposed disposition; and*
 - *Inviting submissions to be made to the local government before a date to be specified in the notice, being a date not less than 2 weeks after the notice is first given; and*
 - *It considers any submission made to it before the date specified in the notice and, if its decision is made by the council or a committee, the decision and the reasons for it are recorded in the minutes of the meeting at which the decision was made.*
3. Restricted use – site is zoned “Parks and Recreation” under LPS 6. Use is restricted to this and not for commercial (café, restaurant, office or the like) purposes, subject to discretion by the City’s Statutory Planning Department. Like all Bowls and Recreation Clubs the current Club operates a bar and function area complimentary to their activities. Ancillary activities should be seen as secondary to the main purpose of Parks and Recreation.
4. Any ground lease term that is 20 years or longer requires Western Australian Planning Commission (WAPC) consent pursuant to the requirements of the Planning Development Act 2005 (see Section 136 of the *Planning and Development Act 2005*).

Summary

A lease would not be able to be agreed, finalised and signed within the timeframes described in the Notice of Motion. In addition to agreeing the terms of a lease the issues identified in 1 to 4 above need to be complied with. Elected Member have also recently expressed the desire to comment on new leases which will extend the timeframe of finalising this lease.