



**PROPOSED AMENDMENTS / RESOLUTIONS AT
COMMITTEE OR COUNCIL MEETINGS**
(Elected Members)

Please forward this form to – Governance@melville.wa.gov.au

Name:	Councillor Margaret Sandford
Date of Meeting:	15 September 2020
Meeting of the:	OMC
Item No.	M20/5770
Title of Item	Melville Bowling Club Inc New Lease & Petition

Disclaimer: Where administration has provided any assistance with the framing and/or wording of any motion/amendment to the Elected Member who has advised their intention to move it, the assistance has been provided on an impartial basis. The principle and intention expressed in any motion/amendment is solely that of the intended mover and not that of the officer/officers providing the assistance. Under no circumstance is it to be expressed to any party that administration or any officer holds a view on this motion other than that expressed in an official written or verbal report by administration to the Committee or Council meeting considering the motion.

PROPOSED AMENDMENT OR REJECT AND REPLACE MOTION:

(If an amendment is proposed, please identify the words being amended and reasons for the amendment)

That the Council:

1. Notes 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 petitioner of this resolution.

2. Notes the privileged and confidential legal advice from Minter Ellison as per the confidential attachment 1 in relation to their review of the proposed lease and terms requested by the Melville Bowling Club Inc. (**Proposed Lease**).

3. In relation to the Proposed Lease reviewed by the City's solicitors, and the five "**Lease Agreement Terms Not Agreed Between the City and Melville Bowling Club**", as listed on pages 4 & 5 in Late Item M20-5770, resolves as follows:

3.1 Alterations (Clause 5.4).

In accordance with the officer's advice, the standard Clause 5.4 in the City's Lease Agreement 5770 COM Final Lease (**City's Lease**) be used in the Proposed Lease except, being in the nature of a ground lease, for the deletion of the words "under the supervision and" from the last line of the standard Clause 5.4, and the previous Clause 5.4 be deleted as per the tracked changes to clause 5.4 of the **attached** amended Proposed Lease.

PTO



3.2 Signs (Clause 5.7).

In accordance with the officer's advice, the standard Clause 5.7 in the City's Lease be used to replace the previous Clause 5.7 in the Proposed Lease as per the tracked changes to clause 5.7 of the **attached** amended Proposed Lease.

3.3. Redevelopment (Clause 14.1)

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

3.4 Car-parking Licence (Schedule 1. Item 12)

That a non-exclusive car parking licence be retained as a Special Condition in Schedule 1 of the Proposed Lease, with the addition of the word "**non-exclusive**" before the word "licence" in the first line as per the tracked changes to Item 7.5 of the **attached** amended Proposed Lease.

3.5 Financial Reporting Obligation by Lessee (Schedule 1. Item 8 – City's Lease)

In accordance with the officer's advice, that Item 8 of the City's Lease Schedule 1 be included in the Proposed Lease Agreement as per the tracked changes at Item 7.7 of the **attached** amended Ground Lease.

4. Directs the Chief Executive Officer, after making the amendments listed in subparagraphs 3.1 to 3.5 above to the Proposed Lease, as already reviewed by Minter Ellison, to present the amended Proposed Lease to the Melville Bowling Club Inc. for signing on or before 30 September 2020.

REASONS:

(A) Resolution 3.1 Alterations (Clause 5.4)

The resolution provides that the Melville Bowling Club (**Club**) must obtain the prior written consent of the City to make any alterations or build any structure on the Premises in accordance with clause 5.4 of the City's Lease.

As the parties intend for this to be a ground lease, and not a standard sporting club lease, any buildings or improvements to the Premises will be built at the Lessee's cost. Therefore, the Premises will become the sole responsibility of the Lessee, even to the extent that clause 5.15 of the Proposed Lease (which mirrors most of the same clauses as the City's Lease) enables the City to require demolition of the premises at the end of the Lease Term.

If the City becomes involved in the supervision of the building process, the City would unnecessarily take on the responsibility for the quality of the workmanship during construction. That is a risk which should not be assumed by the City or the Community, as the Lessee is solely responsible for compliance with all building standards and approvals in any event.

(B) Resolution 3.3 Redevelopment (Clause 14.1)

The Council resolution on 21 July 2020 granted the Club an Initial Lease Term of 50 years. The proposed Redevelopment Clause 14.1 contradicts and undermines the Council's majority decision. If included, this clause could result in the City effectively rescinding the Council decision and limiting the Lease Term to only 10 years.



The 50 year Wave Park Lease, and the City's long-term commercial leases of 90 years or so which have been presented to Council since October 2019, do not contain any redevelopment clauses.

The officer's report confirms that the City has no current or future plans to redevelop the Premises.

The City's Lease clause 14.1(c)(ii) exempts the City from any liability to pay compensation to the Club for early termination of the Lease for redevelopment, or to relocate the Club to an alternative site, which would be illegal if this were a retail shop lease, is highly disruptive and uncommercial, and unfair at best.

It is also a breach of a tenant's fundamental right to "peaceably hold and enjoy" the Premises for the Term without any interruption by the landlord, pursuant to clause 6.1 of the City's Lease, for the City to be able to terminate the Lease without default by the Tenant after only 10 years, especially given Club's need to raise and expend substantial funds to upgrade the 62 year old clubhouse.

Therefore the clause 14.1 redevelopment clause should not be included.

C. Resolution 3.4 Non-Exclusive Car Parking Licence (Schedule 1. Item 12)

The location of the Premises requires that access must be granted through the existing carpark. The grant of a non-exclusive licence does not grant the Club any greater rights of access than is currently shared between the Club and the many other users of Tompkins Park. As the Club proposes to make considerable improvements to the Premises, which will enhance its community facilities, certainty of access and availability of parking is a reasonable and essential request.

D. Resolution 4 Signing of Amended Lease

After 10 months have transpired since negotiations by the Club with the City began in November 2019, the City now proposes to have the standard City's Lease marked "subject to legal review" reviewed by its solicitors. It was due to the City's request for a ground lease that the Club amended the City's Lease to include ground lease terms. The **attached** amended Proposed Lease now mirrors most of the clauses in the City's Lease. The officer's recommendation for further legal review of the City's Lease would require unnecessary further amendments to be made to the City's Lease, which is why the Club provided its Proposed Lease to the City in the first place.

The City has already expended community funds on a legal review of the Club's Proposed Lease, which has been specifically tailored by the Club as a ground lease and, as a result of the legal review by the City's solicitors, has identified 5 specific issues of concern and disagreement.

Council has reviewed these 5 issues of disagreement and, in accordance with the Council Resolution made on 21 July 2020, has made further resolutions to accept, modify or reject the issues of disagreement. Consequently, as the City has not specified any other disputed lease clauses in the Proposed Lease, and as the Proposed Lease has already been legally reviewed by the City's solicitors and has been specifically tailored as a ground lease, it is unnecessary to expend further community funds on additional legal expenses.

SIGNATURE: _____



City of
Melville

DEED OF GROUND EXTENSION AND VARIATION OF LEASE

BETWEEN

CITY OF MELVILLE

(Lessor)

AND

MELVILLE BOWLING AND RECREATION CLUB INC.

(Lessee)

PORTION OF LOT 39
592 CANNING HIGHWAY, ALFRED COVE

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IT IS AGREED

1.1 INTERPRETATION

1.2 DEFINITIONS

In this document:

"**Business Day**" means a day other than a Saturday, Sunday or bank or public holiday in Western Australia.

"**Date of Commencement**" means the date of commencement of the Term.

"**Deed**" means this Deed of Extension and Variation of Lease;

"**Further Term**" means the terms described in Item 4.2 of **schedule 1** attached to this Deed;

"**Lease Agreement**" means the written lease agreement described in Item 1 of **schedule 1**.

"**Lessee's Covenants**" means the covenants and obligations contained or implied by the Lease Agreement for the Clubhouse and Bowling Greens at Lot 39, 592 Canning Highway, Ardross (as applicable), the Deed of Variation and this Deed to be observed and performed by any person other than the Lessor;

"**Lessee's Maintenance Obligations**" means the obligations of the Lessee set out in **Appendix "A"**.

"**Premises**" means the land described in item 1 of **schedule 1** together with all buildings and improvements on that land or after the signing of this Lease erected on that land including the Lessor's fixtures, fittings, plant and equipment and includes any part thereof.

"**Privacy Principles**" means the principles stated in the *Freedom of Information Act 1992 (WA)*.

"**Rent**" means the annual rent payable from time to time as described in Item 5 of **schedule 1**;

"**Reserve**" means where the Premises are a Reserve (as defined in the *Land Administration Act 1997*) or portion of such a Reserve which has been placed under the care, control and management of the Lessor pursuant to the *Land Administration Act 1997*, that reserve.

"**Term**" means the term specified in item 4.1 of **schedule 1** and includes, if the Lessee exercises any option of renewal of this Lease granted to the Lessee pursuant to the provisions of **clause 3**, any further term.

"**this Lease**" or "**this document**" or "**this agreement**" means this document.

1.3 Definitions: GST

In this document the expressions "consideration", "GST", "input tax credit", "supply", "supplier", "tax invoice", "recipient" and "taxable supply" have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999.

1.4 Construction

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) "includes" means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (v) a right includes a benefit, remedy, discretion or power;
 - (vi) time is to local time in Perth, Western Australia;
 - (vii) "\$" or "dollars" is a reference to Australian currency;
 - (viii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
 - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions;
 - (x) this document includes all schedules and annexures to it; and
 - (xi) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this document;
- (g) if the date on or by which any act must be done under this document is not a Business Day, the act must be done on or by the next Business Day; and
- (h) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

1.5 Headings

Headings do not affect the interpretation of this document.

1.6 Exercise of Discretion

A power, authority, right or discretion conferred by this Lease may be exercised from time to time as the occasion requires.

1.7 Withholding of Consent or Approval

Where the consent or approval of a party to this Lease is required, that consent or approval must not be unreasonably or capriciously withheld.

2 CONDITIONS

2.1 Conditions

This document is subject to and conditional upon:

- (a) the approval of the Western Australian Planning Commission under section 136 of the *Planning and Development Act 2005*; and
- (b) any other necessary approvals and consents,

(if and to the extent that those approvals and consents are necessary and have not been obtained prior to the signing of this document) being obtained within six (6) months after the signing of this document.

2.2 Application for Approvals and Consents

Within 14 days after the signing of this document the Lessor must, if the Lessor has not already done so, make application for the approvals and consents referred to in **clause 2.1** and must pursue those applications and the Lessee must promptly join in the applications as may be necessary.

2.3 Failure of Condition

If any approval or consent is refused or not obtained on or prior to the date specified in **clause 2.1** this document ceases to have effect and no party has any claim against any other party.

2.4 Approval or Consent Subject to Conditions

If any approval or consent is granted subject to any conditions with which either party is unable or reasonably unwilling to comply that party may give to the other a notice in writing that the condition is unacceptable and thereupon the approval or consent is deemed to have been refused and this document ceases to have effect and no party has any claim against any other party.

3 LEASE TERM

3.1 Initial Term

The Lessor leases the Premises to the Lessee and the Lessee takes the Premises on lease from the Lessor together with the rights specified in item 2 of **schedule 1** but subject to the provisions of this Lease.

3.2 Option of Renewal

If at the date of exercise of the option in this **clause 3.2** contained the Lessee has not failed to comply with any notice given by the Lessor to the Lessee requiring the Lessee to remedy a breach by the Lessee of the provisions of this Lease on the Lessee's part to be complied with, the Lessee has the option of extending this Lease for the Further Term specified in item 4.2 of **schedule 1** exercisable by the written request of the Lessee made not more than six (6) months nor less than three (3) months prior to the expiration of the Term at the same Rent and upon the same provisions as are contained in this Lease except this **clause 3.2**.

4 RENT

4.1 Obligation to pay

The Lessee agrees with the Lessor that:

- (a) the Lessee must pay to the Lessor the Rent without any deduction or abatement whatsoever except as set out in **clause 8**;

4.2 Rent

Subject to the succeeding provisions of this **clause 4**, the Rent is the amount specified in item 5 of **schedule 1**.

4.3 Method of payment

Rent must be paid annually in advance pro rata to 30 June in the first year and annually in advance throughout the subsequent term. The first such payment to be made on the Date of Commencement.

5 LESSEE'S AGREEMENTS WITH LESSOR

The Lessee agrees with the Lessor as follows:

5.1 Outgoings

To pay when due all charges, rentals and expenses in respect of gas, electricity, water, telephone, telecommunications, insurance premiums, used, consumed or incurred in respect of the Premises and if it is possible and reasonably practical to do so, to procure the issue of accounts in respect of such services to and in the name of the Lessee rather than to and in the name of the Lessor. In the event that the Premises are not separately rated, charged or assessed in respect of any of the , taxes, assessments, impositions and outgoings referred to in **clause 5.1**, then for the purposes of this paragraph they shall be apportioned between the Licensed Area and the other premises the subject of the assessment in proportion to their area. Likely outgoings and percentage of outgoings to be paid by the Lessee in accordance with Clause 5.1 are outlined in **schedule 1 – Item 7.1**)

5.2 Assignment, Subletting, Parting with Possession

- (a) Subject to **clause 1.7**, not to assign, mortgage, charge, sublet or part with the possession of the Premises without the prior written consent of the Lessor.
- (b) Not to assign, mortgage, charge, sub-let or part with the possession of the Premises without such prior approval in writing (if any) as is required pursuant to the *Land Administration Act 1997*.
- (c) This **clause 5.2** does not preclude the hiring by the Lessee of the Premises or parts of the Premises;

- (i) all Fees may be kept by the Lessee;
- (ii) no hiring of the Premises in any way alters or affects the Lessee's obligations to the Lessor which shall continue in full force and effect.

5.3 Comply with all laws

To comply with and obey the provisions of all laws which may from time to time be made or given with respect to or affecting the Premises.

5.4 Alterations

- ~~(a) The Lessor acknowledges that the Lessee intends to build a new clubhouse on the premises and the Lessor has consented to the building of new premises subject only to any proposed building complying with relevant planning, building and engineering requirements.~~
- ~~(b) For the purposes of making any alterations or building application, the Lessor authorises the Lessee to submit and sign any building application to the relevant local and/or other government authorities in the capacity as the owner of the Land and the Lessor acknowledges that any building size, design or modification is at the sole discretion of the Lessee and the Lessor cannot withhold permission for any application except in accordance with any statutory duty or non-compliance with any building or planning rules or regulations.~~

Not without the prior written consent of the Lessor to:

- (a) erect or permit to be erected any building or structure on the Premises or to make or permit to be made any alteration in or to any building or structure erected on the Premises other than maintenance or refurbishment

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And the Lessee further agrees that if any buildings and improvements are to be constructed, erected or made or works carried out or executed on the Premises or any such installation is to be made by the Lessee, it is agreed that they must be constructed, erected, made, carried out and executed to the satisfaction of the Lessor and not otherwise.

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5.5 Maintenance and Repair

To:

- (a) keep and maintain the Premises in good and tenantable repair and condition, fair wear and tear excepted; and
- (b) without limiting the generality of paragraph (a), promptly and in a proper and workmanlike manner
 - (i) carry out and comply with the Lessee's Maintenance Obligations; and
 - (ii) carry out all repairs and maintenance rendered necessary by the negligence, act, default or omission of the Lessee or any officer, member, employee, agent, contractor or invitee of the Lessee or by the use of occupancy by any such person of the Premises.

5.6 Use

Not to:

- (a) use or to permit to be used the Premises for any purpose whatsoever other than for the purposes and objects for which the Reserve is vested in and is held by the Lessor;

- (b) use or permit to be used the Premises for any purpose other than that or those specified in item 6 of **schedule 1**;
- (c) carry on or suffer to be carried on upon the Premises any noxious noisome or offensive trade act business occupation or calling;
- (d) make, do or suffer upon the Premises any act, matter or thing that may be or become a nuisance or annoyance to the Lessor or to the owners or occupiers of property in the neighbourhood of the Premises
- (e) sell or dispense alcohol from the Premises or allow alcohol to be sold or dispensed from the Premises without the prior written consent of the Lessor and then only in accordance with the provisions of the *Liquor Control Act 1988* and any policy of the City relevant to the sale and/or consumption of alcohol on Council property;
- (f) permit any person to smoke in any building constructed on the Premises;
- (g) sell, remove or otherwise dispose of any clay, sand, gravel, timber or other materials from the Premises. This provision does not apply to the sale or removal of timber, materials, plant or equipment arising from the demolition or repair or maintenance of the Premises or the conduct of the business activities of the Lessee at the Premises;
- (h) store motor fuels, fertilizers, chemicals, inflammable liquids, acetylene gas or volatile or explosive oils, compounds or substances upon the Premises that would breach the Explosives and *Dangerous Goods Act (Storage and Handling of Non-explosives) Regulations 2007*.
- (i) permit any person to sleep on the Premises except for security reasons or for a specific event.
- (j) use or permit or suffer to be used any lavatories, toilets, sinks and drainage and other plumbing facilities in the Premises for any purposes other than those for which they were constructed or provided or deposit or permit to be deposited therein any sweepings, rubbish or other matter and any damage thereto arising caused by misuse shall be made good by the Lessee forthwith and all damages occasioned thereby shall also be paid by the Lessee.

5.7 Signs

~~The Lessor grants the Lessee the right to erect signs that promote or facilitate the Lessee's use of the premises without having to seek any prior permission/s from the Lessor and only subject to the condition that the content of the sign or signs comply with rules applicable to commercial or retail signage within the City of Melville and that the signs are to be kept and maintained in good and tenable repair and condition.~~

Not to affix or exhibit or permit to be affixed or exhibited to or upon the Premises any placard, poster, sign, board or other advertisement that is visible externally without the prior written consent of the Lessor and if such consent is given, to keep and maintain any such advertisement in good and tenable repair and condition.

5.8 Report Acts of Vandalism

To as soon as reasonably practicable report to the Lessor any known acts of vandalism or any incident which is known to the Lessee and which occurs adjacent to the Premises which is or is likely to involve a breach of the peace or become the subject of a report to the police.

5.9 Insurance

To take out and keep in force the following policies of insurance with an insurer approved by the Lessor:

- (a) a public liability insurance policy naming the Lessee as the insured for an amount which at the commencement of the Term must not be less than the sum of TWENTY MILLION DOLLARS (\$20,000,000.00) and which must be adjusted at the expiration of the first and each succeeding year during the Term to an amount which on the date of each adjustment the parties agree represents an amount of public risk insurance which a reasonable and prudent person in the circumstances of the Lessee would take out and in the event of any dispute concerning the amount it must be fixed at the expense of the Lessee by an insurance broker nominated by the Lessor;
- (b) a workers' compensation policy covering all employees of the Lessee; and
- (c) an insurance policy, in the event of damage or destruction by such risks against which a reasonable and prudent person in the circumstances of the Lessee would insure, insuring against either of;
 - (i) The Lessee's building, furniture and fittings (in their full insurable value on a replacement and/or reinstatement basis including extra costs reinstatement) or
 - (ii) The cost of reinstatement of the site (land) to a clean and tidy site
- (d) Building insurance, against loss or damage by the usual insurable risks including fire, fusion, explosion, storm, tempest, civil

and to deposit each such policy of insurance with the Lessor and at least seven (7) days before they become due to pay all premiums necessary for that purpose and deposit with the Lessor the receipt for the current year's premium or a certificate of renewal of the insurance company and if the Lessee at any time fails to insure and keep insured as above it is agreed the Lessor may do all things necessary to effect or maintain the insurance and that the Lessee must repay any moneys expended by the Lessor for that purpose on demand and any moneys so expended are deemed to be Rent in arrears and may be recovered by the Lessor accordingly.

5.10 Lessor's Rights of Entry

To permit:

- (a) the Lessor, any employee of the Lessor and any other person authorised by the Lessor having given written notice no less than 1 business day in advance to the Lessee to enter upon the Premises and view the condition of the Premises and upon notice being given by the Lessor, to repair the Premises in accordance with such requirements as are set out in any such notice;

5.11 Costs

To pay:

- (a) all the Lessee's costs of and incidental to the preparation, execution and stamping of this Lease; and

- (b) all costs, charges and expenses (including solicitors' costs and architects' fees) incurred by the Lessor for the purposes of or incidental to the preparation and service of a notice under Section 81 of the *Property Law Act 1969*, requiring the Lessee to remedy a breach of any provision of this Lease notwithstanding forfeiture for the breach is avoided otherwise than by relief granted by the Court.

5.12 Indemnity

- (a) To the extent that the terms and conditions of any insurance effected by the Lessor or any money paid to the Lessor out of insurance effected by the Lessee do not fully indemnify the Lessor against all actions, claims, demands, notices, losses, damages, costs and expenses to which the Lessor becomes liable in respect of any of the matters referred to in sub-paragraphs (i), (ii) and (iii) of this **clause 5.12(a)**, to indemnify and keep indemnified the Lessor against all actions, claims, demands, notices, losses, damages, costs and expenses for which the Lessor becomes liable in respect of any loss or damage to property or death or injury of whatever nature or kind and however and wherever sustained:
- (i) caused or contributed to by the use or occupation of the Premises except to the extent that the same is caused or contributed to by the negligence, act, default or omission of the Lessor;
 - (ii) resulting from any negligence, act, default or omission of the Lessee or any officer, member, employee, agent, contractor or invitee of the Lessee; or
 - (iii) resulting from any notice, claim or demand to pay, do or perform any act, matter or thing to be paid, done or performed by the Lessee under this Lease except to the extent that the Lessor is obliged under the provisions of this Lease to pay for or contribute to that cost.
- (b) Without limiting the generality of **clause 5.12(a)**, to indemnify and keep indemnified the Lessor against all actions, claims, demands, losses, damages, costs and expenses for which the Lessor becomes liable in respect of or arising from the overflow or leakage of water or other fluids in or from the Premises except to the extent that the same is caused or contributed to by the negligence, act, default or omission of the Lessor.
- (c) Without limiting the generality of **clauses 5.12(a)** and **5.12(b)**, to indemnify and keep indemnified the Lessor against any claim, action, demand, fine, damage, costs or expenses arising out of any breach by the Lessee or any officer, member, employee, agent, contractor or invitee of the Lessee of any provision of the *Occupational Health, Safety and Welfare Act 1984*.

5.13 Restore Premises

Subject to Clause 5.15, Upon the expiration or sooner determination of the Term to remove all fixtures and fittings of the Lessee from the Premises and to make good any damage caused by such removal and in particular but without limiting the generality of the above to remove or paint over, as the case may require, any sign, placard or advertisement affixed or exhibited in to or upon the Premises by the Lessee.

5.14 Obligation to report injuries, loss or damage

Subject to Privacy Principles and any legal restrictions that may apply and in the event of injury, loss or damage to any person or property on the Premises, to notify in writing the

Lessor of the injury, loss or damage as soon as is reasonably practicable after the event or such additional time that may be necessary to clarify the Lessee's legal right to release personal information, giving full details of the event and names and contact details of any people involved in the event, including witnesses.

The Lessor may request further particulars from the Lessee, in which case the Lessee must respond promptly and do all things reasonably necessary to satisfy the request of the Lessor.

5.15 Deliver up Premises

Upon the expiration or sooner determination of the Term to deliver up the Premises and all additions to the Premises and fixtures and fittings in the Premises and the keys of the Premises (if any) to the Lessor in good and tenable repair order and condition in strict accordance with the Lessee's obligations under this document.

If the building is not required by the Lessor the Lessee will incur the cost to have the building and any other structures built by the Lessee removed or demolished leaving a cleared tidy site.

5.16 Behaviour

To ensure the decent behaviour in or around the Premises of all members, patrons, visitors and employees of the Lessee and to take all necessary action to prevent disorderly behaviour and the use of indecent language by such persons and to prevent any disturbance or nuisance or annoyance arising from their use of or presence in the Premises.

6 LESSOR'S AGREEMENTS WITH LESSEE

The Lessor agrees with the Lessee as follows:

6.1 Quiet Enjoyment

If the Lessee pays the Rent and observes and performs the provisions of this Lease on the part of the Lessee to be observed and performed, the Lessee is, subject to **clause 5.10**, entitled to peaceably hold and enjoy the Premises during the Term without any interruption by the Lessor or any person rightfully claiming under or in trust for the Lessor.

6.2 Repairs and Maintenance

The Lessor must promptly and in a proper and workmanlike manner carry out and comply with the Lessor's Maintenance Obligations.

7 DEFAULT

The Lessor and the Lessee agree as follows:

7.1 Default: Essential Terms

Each of the obligations of the Lessee set out in **clause 4** (payment of Rent), **clause 5.2** (assignment, sub-letting and parting with possession), **clause 5.5** (maintenance and repair), **clause 5.6** (use of the Premises), **clause 5.9** (the Lessee's insurances), **clause 5.14** (obligation to report injuries, loss or damage) and **clause 5.12** (indemnity) of this document is an essential term of this document.

7.2 Default

If:

- (a) any Rent or any other moneys payable under this document remain unpaid for ten Business Days after written demand has been received by the Lessee from the Lessor; or
- (b) *an order is made or a resolution is effectively passed for the winding up of the Lessee (other than for the purpose of amalgamation or reconstruction) or the Lessee becomes bankrupt or if any deed of assignment or deed of arrangement is prepared by or for or presented to the Lessee for execution by it or there is appointed under any Act or instrument or by order of any Court a manager or an administrator or a trustee or a receiver or a receiver and manager or liquidator in relation to any part of the Lessee's undertakings or assets or property; or*
- (c) the Lessee fails within the time specified in a notice (which time shall be not less than 10 Business Days) requiring the Lessee to remedy a breach by the Lessee of any one or more of the provisions of this Lease unless the non-performance or non-observance has been waived or excused by the Lessor in writing; or
- (d) the Premises are deserted or vacated,

then and in each case the Lessor or any person or persons duly authorised by the Lessor at any time thereafter and without any notice or demand may re-enter into and upon the Premises and repossess the Premises and thereby the Term and the estate and interest of the Lessee in the Premises will immediately determine.

The Lessor's right of action referred to above is without prejudice to the right of action or other remedy which the Lessor has in respect of any prior breach by the Lessee of any provision of this Lease and following such forfeiture the Lessor is entitled to recover from the Lessee damages for loss of the benefits which performance of the provisions of this Lease by the Lessee would have conferred on the Lessor between the date of forfeiture and the expiry of this Lease by the passing of time.

7.3 Execution of Works by Lessor

If and whenever the Lessee fails within the time specified in a notice issued pursuant to **clause 7.2(c)** to remedy a breach of a provision of this Lease, the Lessor may (without prejudice to any other rights or remedies of the Lessor) enter upon the Premises, carry out or execute any repairs, requisitions, notices or works, remedy any default, pay or discharge any outgoings or other moneys or do any act, matter or thing the Lessor thinks necessary or desirable to ensure or secure compliance with the provisions of this Lease and the Lessee must repay any moneys expended by the Lessor for that purpose on demand and any moneys so expended are deemed to be Rent in arrears and may be recovered by the Lessor accordingly.

7.4 Interest on Overdue Money

Without affecting the rights, powers and remedies of the Lessor under this Lease, the Lessee agrees to pay to the Lessor on demand interest on any money due by the Lessee to the Lessor pursuant to this Lease but unpaid for ten Business Days calculated from the due date for payment until payment in full and computed at the rate per cent per annum which is adopted by the current City of Melville budget from time to time and such interest is deemed to be Rent in arrears and may be recovered by the Lessor accordingly.

7.5 Acceptance of Rent Not to Prejudice Lessor's Right

Demand for or acceptance of Rent or any other amounts payable by the Lessee in terms of this Lease after default by the Lessee under this Lease (other than on the grounds of non-payment of that Rent or the other amounts as the case may be) will not affect the exercise by the Lessor of the rights and powers conferred upon the Lessor by this Lease and will not operate as an election by the Lessor to exercise or not to exercise any right or power.

8 DAMAGE OR DESTRUCTION

8.1 Damage or Destruction

- (a) Subject to the provisions of **clause 8.2** if the Premises are at any time during the Term totally or partially destroyed or damaged so as to render the Premises unfit for the occupation and use of the Lessee or inaccessible, the Rent and any other moneys payable by the Lessee under the terms of this Lease ("**Amounts Payable**") or a proportionate part of the Amounts Payable according to the nature and extent of the damage sustained shall abate and all or any remedies for recovery of the Amounts Payable falling due after the destruction or damage or a proportionate part of the Amounts Payable shall be suspended until the Premises have been rebuilt or made fit for the occupation and use of the Lessee or accessible to the Lessee as the case may be.
- (b) The abatement of the Amounts Payable referred to above shall not apply in case of destruction or damage caused by the Lessee or any officer, member, employee, agent, contractor or invitee of the Lessee or if any policy or policies of insurance have been vitiated or payment of the policy moneys refused because of the negligence, act, default or omission of the Lessee or of any officer, member, employee, agent, contractor or invitee of the Lessee.

8.2 Total Damage or Destruction

If the Premises are at any time during the Term destroyed or damaged to an extent as to be wholly unfit for occupation and use either party may by notice in writing to the other of them given within forty five Business Days after the event determine this Lease and thereupon this Lease is determined without prejudice however to the liability of the Lessee under this Lease up to the date of determination.

9 GST

- (a) Unless otherwise expressly stated, all Rent, prices or other sums payable or consideration to be provided under or in accordance with this document are exclusive of GST.
- (b) If GST is imposed on any supply made under or in accordance with this document, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this document.
- (c) If this document requires a party to pay for, reimburse or contribute to any expense, loss or outgoing ("reimbursable expense") suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first party will be the sum of:

- (i) the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense ("net amount"); and
 - (ii) if the other party's recovery from the first party is a taxable supply, any GST payable in respect of that supply.
- (d) If a GST inclusive price is charged, the supplier must provide the recipient of the supply a valid tax invoice at or before the time of payment.

10 LIMITATION OF LIABILITY OF LESSOR

The Lessor's obligations under this document:

- (a) bind only the person holding the reversionary estate of the Premises immediately expectant upon the expiry of the Term; and
- (b) only render the Lessor liable in damages when the act omission or default giving rise to damages occurs while the Lessor is the registered proprietor of the Premises or while the Premises are vested in the Lessor (as the case may be).

11 SPECIAL CONDITIONS

The Lessor and the Lessee agree that the special conditions (if any) set out in item 7 of **schedule 1** shall apply and agree with each other to observe and perform the obligations on the part of each of them set out in item 7 of **schedule 1**.

12 DISPUTE RESOLUTION

12.1 Notice of Dispute

- (a) If a difference or dispute (together called a "**Dispute**") between the parties arises out of or relates to this document, or the breach, termination, validity or subject matter of it, or as to any claim in tort, in equity or pursuant to any domestic or international statute or law, then any party may give the other a written notice of dispute adequately identifying and providing details of the Dispute ("**Notice of Dispute**").
- (b) Notwithstanding the existence of a Dispute, all parties will, subject to this document, continue to perform the agreement evidenced by this document.

12.2 Conference

Within ten Business Days after receiving a Notice of Dispute, the parties will confer at least once to resolve the Dispute or to agree on methods of doing so. At every such conference each party will be represented by a person having authority to agree such resolution or methods. All aspects of every such conference, except the fact of its occurrence, will be privileged.

12.3 Expert mediation

- (a) If the Dispute is not resolved within the following five Business Days (or such further period as the representatives may agree is appropriate), the parties in dispute agree to endeavour in good faith to settle the Dispute by mediation administered by the Australian Commercial Disputes Centre ("**ACDC**") before having recourse to arbitration or litigation.

- (b) The mediation will be conducted in accordance with ACDC Mediation Guidelines which set out the procedures to be adopted, the process of selection of the mediator and the costs involved and the terms of those Guidelines are incorporated in this document.
- (c) This clause does not merge on the expiration or sooner determination of this Lease.

12.4 Exchange of information

The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause is to attempt to settle the Dispute between the parties. No party may use any information or documents obtained through the dispute resolution process established by **clause 12** for any purpose other than an attempt to settle a Dispute between the parties.

12.5 Termination of dispute resolution

After expiration of the time established by or agreed under this clause for agreement on the dispute resolution process, any party which has complied with the provisions of **clauses 12.1** to **12.5**, may in writing terminate the dispute resolution process provided for in those clauses and may then refer the Dispute to arbitration.

12.6 Agreement to arbitrate

- (a) If the parties fail to settle any Dispute in accordance with **clause 12.3**, that Dispute will be submitted to final and binding arbitration under the Rules of Arbitration of the Institute of Arbitrators and Mediators Australia by one or more arbitrators appointed in accordance with those rules.
- (b) This clause does not merge on the expiration or sooner determination of this Lease.

12.7 Selection of arbitrator

Before establishment of the arbitral tribunal, a party may, without any inconsistency with this agreement to arbitrate or the dispute resolution procedures set out above, seek interim or provisional relief in respect of the subject matter of the Dispute from any Court having jurisdiction. Such interim or provisional relief may be vacated, continued or modified by the arbitral tribunal at the request of any party. Any party may seek, to the full extent allowed by law, judicial enforcement, in a Court having jurisdiction, of any interim or provisional relief granted by the arbitral tribunal.

12.8 Governing law

The law of the arbitration will be the law of Western Australia.

12.9 Place and language of arbitration

The arbitration will be conducted in Perth, Western Australia. The parties waive, to the fullest extent allowed by law, any defence to an action to compel arbitration based on the argument that the venue selected is in any way inconvenient or inappropriate, or that the party will in any respect be deprived in such venue of its rights effectively to arbitrate the dispute. The language of the arbitration will be English.

13 MISCELLANEOUS PROVISIONS

The Lessor and the Lessee agree that:

13.1 Notices

Any notice to be given pursuant to this Lease is deemed to have been duly served on the party to whom it is to be given if served in the manner provided in Section 135 of the Property Law Act, 1969 and, in addition, in the case of a notice to the Lessee if left addressed to the Lessee at the Premises.

13.2 Holding Over

If the Lessee remains in possession of the Premises after the expiry of the Term with the consent of the Lessor the Lessee will be a monthly tenant of the Lessor at a monthly Administration Fee equivalent to one twelfth of the aggregate of the Rent payable upon the expiry of the Term which would be payable by the Lessee if an extension of the Term had been granted at the expiry of the Term and otherwise on the same terms and conditions as this Lease (except **clause 3.2**).

13.3 Waiver

No waiver by the Lessor of any breach of any provision of this Lease by the Lessee operates as a waiver of another breach of any provision of this Lease by the Lessee.

13.4 Severance

If any part of this Lease is or becomes void or unenforceable then that part is or will be severed from this Lease so that all parts not void or unenforceable remain in full force and effect and unaffected by that severance.

13.5 Statutory Powers

The powers conferred by or under any statute except to the extent inconsistent with the terms and provisions expressed in this Lease) are in augmentation of the powers conferred on the Lessor by this Lease.

13.6 Governing Law and Jurisdiction

- (a) This document is governed by and is to be construed in accordance with the laws in force in Western Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

13.7 Joint and Several Liability

An obligation of two or more persons binds them jointly and severally.

13.8 Time of the Essence

Time is of the essence in respect of the performance and observance by the Lessee of the provisions of this Lease.

SCHEDULE 1**1. Premises** (Clauses 1.2 and 3.1)

Melville Bowling & Recreation Club at 592 Canning Highway, Alfred Cove being a portion of Lot 39 D 17693 CT Volume 1185 Folio 584. More particularly being the land, the structures and the facilities within and including the perimeter fencing delineated in red on the attached Aerial View.

2. Rights (Clause 3.1)

None

3. Reservations (Clause 3.1)

None

4. Term (Clause 3)**4.1 Initial term** (Clause 3.1)

Fifty (50) years commencing 1 August 2020 and ending 1 September 2070

4.2 Further term (Clause 3.2)

Forty Nine (49) years

5. Rent (Clause 4)

Annual Administration fee of \$681.30 excluding GST as adopted in the 2019/2020 Council Budget. The Annual Administration Fee will apply from 1 July in each year.

6. Purpose for which Leased Premises to be Used (Clause 5.6(b))

The premises are to be used for the purpose of encouraging and increasing participation in bowling activities and to promote other recreational, cultural and social activities conducive to the wellbeing of the members and the local community and other related uses, subject only to the granting of applicable land use and development approvals.

7. Special Conditions (Clause 11)**7.1** Likely outgoings and percentage of outgoings to be paid by the Lessee in accordance with Clause 5.1 are listed below. This list is neither exhaustive nor exclusive but is representative of the scope.

• Water Rates	100%
• Water Consumption	100%
• Sewerage Rates	100%
• FESA (DFES) Levy	100%
• State Land Tax	100%
• Electricity	100%
• Gas	100%
• Telephone/Fax & Data Lines	100%
• Refuse Removal	100%
• Building Insurance	100%
• Contents Insurance	100%

- GST (Where liability is with the Lessee) 100%

7.2 Within seven days of the Lessee's Annual General Meeting the Lessee will provide an updated list of the Lessee's contacts to the Lessor.

7.3 The Lessee is to ensure that all floodlighting shall be installed and operated in accordance with the Council's Flood and Security Lighting (CP-58) policy or any other relevant policy which may be amended or developed in the future.

7.4 The Lessor acknowledges and undertakes as a condition of the Lease that the area of Crown Land currently under the Lessor's management and outlined in blue on the attached map, for as long as the Crown Land remains under the Lessor's management or if the Lessor acquires ownership of the Crown Land, the Land will not be leased to any other party, developed or have any temporary or permanent structures erected on, within or immediately adjacent to the specified area during the Lease Term.

7.5 **Car Parking Licence** The Lessor grants the Lessee an irrevocable [non-exclusive](#) licence for the Term of the Lease for the Lessee and visitors/ clients/ members of or to the Lessee's premises to use without limitation in terms of time or cost, the car parking bays in the existing public carpark adjoining the eastern boundary of the Premises (outlined in yellow on the attached plan) and the Lessor further undertakes to extend and maintain the carpark in good condition and not to impose parking restrictions in the carpark.

7.6 **Road Widening** The Lessee acknowledges that Canning Highway that adjoins the southern boundary of the leased area is subject to a Main Roads Reservation (MRS) for proposed road widening and the Lessee accepts and agrees not to construct or erect any permanent structures other than signage and gardens or landscaping or maintenance or re-construction of the boundary wall, within the MRS area and to immediately release and exclude, without compensation or rent adjustment, that portion of the leased area from the Lease in the event that the MRS road widening is initiated. The Lessee acknowledges and agrees that the construction of a boundary wall along the revised boundary will be the Lessee's responsibility and cost.

7.7 Upon request the Lessee must give the Lessor Annual Financial Statements audited by a member of the Australian Society for CPA's or of the Institute of Chartered Accountants or provide Annual Financial Statements that has been accepted by the Lessee's Annual General Meeting at the discretion of the Lessor.

**Appendix A
Maintenance Obligations**

1. Lessee's Maintenance Obligations

- 1.1. To maintain and keep in good order and repair the Premises and all those parts of the Land and Buildings used by the Lessee or its employees, servants, agents or invitees and where repair or maintenance to such area is required, only to use appropriately qualified and licensed tradesmen (structural maintenance to be included)
- 1.2. At the Lessee's cost to keep clean and sanitary the Premises and all those parts of the Land and Buildings used by the lessee or its employees, servants, agents or invitees
- 1.3. It is the responsibility of the Lessee to comply with the requirements of the Australian Standard to ensure that all portable plug-in equipment at the workplace are safe and appropriately inspected, tested and maintained by a competent person. The Lessor reserves the right to require the Lessee to remove any equipment that appears deficient.

2. Lessor's Maintenance Obligations

- 2.1. To maintain and keep in good order and repair the property forming part of the Reserve outside of, and immediately adjacent to the Premises.

Lessee:	Lessor:

EXECUTED as a DEED of agreement.

Lessor

On this _____ day of _____ 2020

THE COMMON SEAL OF THE CITY OF)
MELVILLE was hereunto affixed)
by authority of a resolution)
of the Council in the presence of:)

.....
MAYOR
George Gear
.....
NAME

.....
CHIEF EXECUTIVE OFFICER
Martin Tieleman
.....
NAME

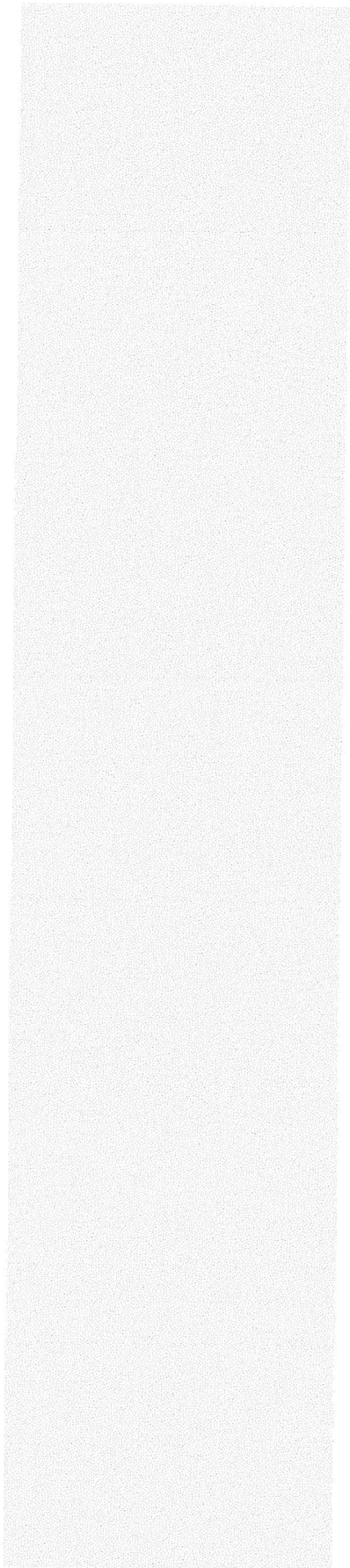
Lessee

On this _____ day of _____ 2020

THE COMMON SEAL of)
MELVILLE BOWLING AND)
RECREATION CLUB INC was)
hereunto affixed in the presence of:)

.....
Signature of Authorised Signatory (1)
Tim Smith
.....
NAME
PRESIDENT
.....
POSITION

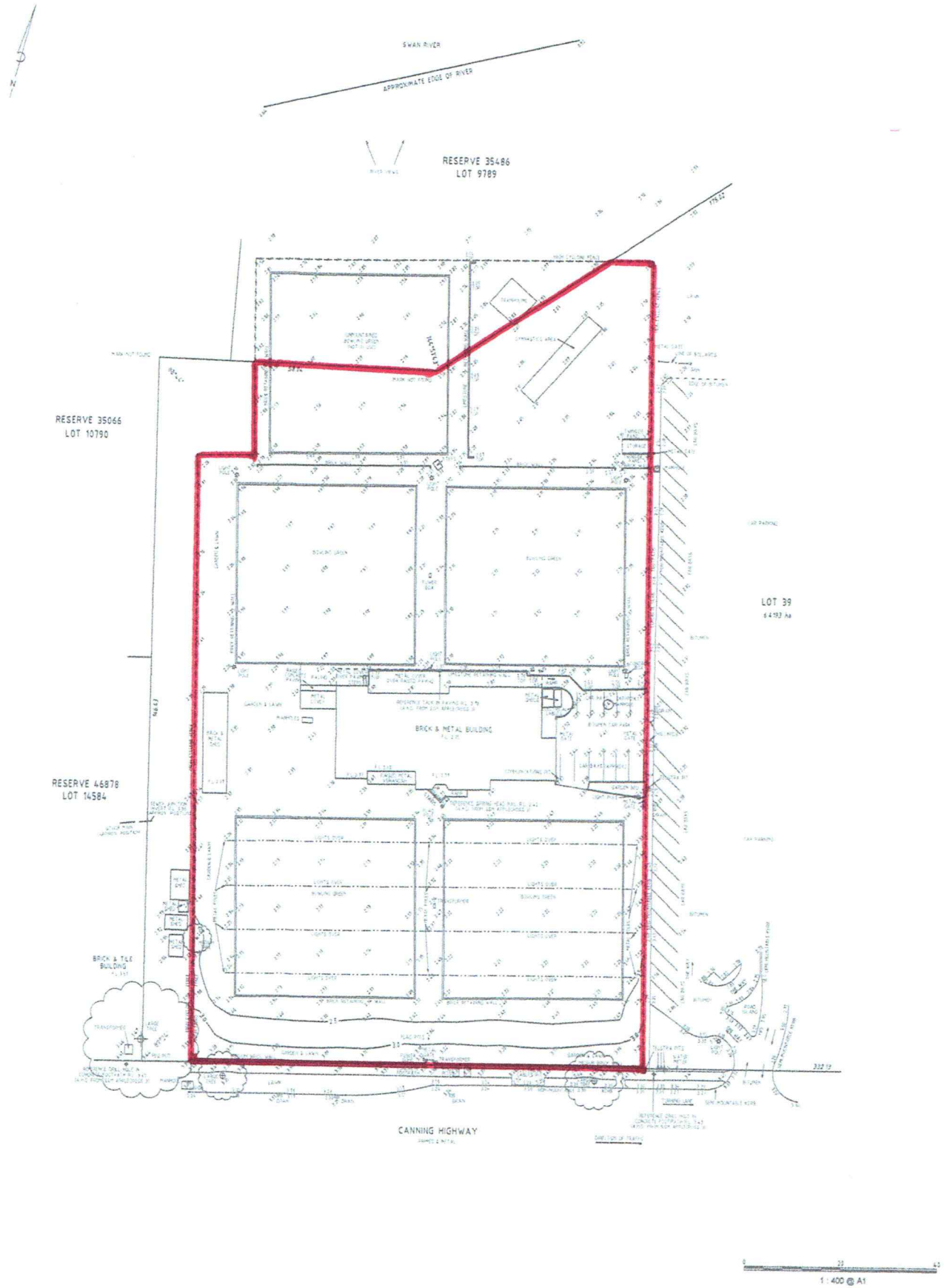
.....
Signature of Authorised Signatory (2)
.....
NAME
DEPUTY PRESIDENT
.....
POSITION





Lease Area Plan

Portion of Lot 39 as marked in RED



PARTIAL CONTOUR AND FEATURE SURVEY OF LOT 39
#596 CANNING HIGHWAY, ALFRED COVE

DIAGRAM : 17693
C/T : 1185 - 584
AUTHORITY : CITY OF MELVILLE
SCALE : 1:400 @ A1
SURVEY DATE : 7 - 8 - 20 & 10 - 8 - 20
JOB : 15849

DRAFTED BY : MSC
DATE : 11 - 8 - 20
CARLTON SURVEYS
Landscape Surveyors
SUITE 4 180 BUNNICK ROAD
BUNNICK, WA 6108
TEL: 9457 0564 FAX: 9457 0467
Email: info@carltonsurveys.com.au

CHECK TITLE FOR EASEMENTS, RESTRICTIVE COVENANTS ETC.
THIS SURVEY DOES NOT GUARANTEE THE CORRECT POSITION OF BOUNDARY
PIERS OR FENCES.
ALL FEATURES AND BUILDING POSITIONS ARE APPROXIMATE ONLY AS THEY HAVE
BEEN POSITIONED FROM MEASUREMENTS TAKEN FROM EXISTING PEGS, FENCES &
WALLS.
A BOUNDARY ADJUSTMENT SURVEY IS RECOMMENDED PRIOR TO
CONSTRUCTION.
INFORMATION SHOWN ON THIS SURVEY IS CURRENT AT THE DATE SHOWN.
CARLTON SURVEYS ACCEPTS NO RESPONSIBILITY FOR ANY CHANGES THAT
HAVE OCCURRED AFTER THIS DATE. TO SITE LEVELS AND FEATURES OR BUILDINGS,
FACTORIES, BOUNDARY SURVEYS SHOULD HAVE BEEN OBTAINED FROM SURVEY
PLANS AND ARE SUBJECT TO FIELD SURVEY.

ENCL 1180 BEFORE YOU GO