

**MINUTES**

**OF THE**

**SPECIAL MEETING OF THE COUNCIL**

**HELD ON**

**THURSDAY 6 APRIL 2017**

**AT 6.30PM IN THE COUNCIL CHAMBERS**

**MELVILLE CIVIC CENTRE**

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**MINUTES OF THE SPECIAL MEETING OF THE COUNCIL HELD IN THE COUNCIL CHAMBERS, MELVILLE CIVIC CENTRE, 10 ALMONDBURY ROAD, BOORAGOON, COMMENCING AT 6.35PM ON THURSDAY, 6 APRIL 2017.**

**1. OFFICIAL OPENING**

The Presiding Member welcomed those in attendance to the meeting and declared the meeting open at 6:35pm. Mr J Clark, Governance and Compliance Program Manager, read aloud the Disclaimer that is on the front page of these Minutes and then His Worship the Mayor, R Aubrey, read aloud the following Affirmation of Civic Duty and Responsibility.

**Affirmation of Civic Duty and Responsibility**

**I make this Affirmation in good faith on behalf of Elected Members and Officers of the City of Melville. We collectively declare that we will duly, faithfully, honestly, and with integrity fulfil the duties of our respective office and positions for all the people in the district according to the best of our judgement and ability. We will observe the City's Code of Conduct and Standing Orders to ensure the efficient, effective and orderly decision making within this forum.**

**2. PRESENT**

His Worship the Mayor R Aubrey

**COUNCILLORS**

Deputy Mayor Cr R Aubrey  
Cr N Pazolli, Cr C Schuster  
Cr J Barton, Cr G Wieland  
Cr C Robartson, Cr M Woodall  
Cr P Phelan  
Cr N Foxton, Cr T Barling

**WARD**

City  
Applecross/Mount Pleasant  
Bicton/Attadale  
Bull Creek/Leeming  
Palmyra/Melville/Willagee  
University

**3. IN ATTENDANCE**

Dr S Silcox	Chief Executive Officer
Ms C Young	Director Community Development
Ms K Brosztl	A/Director Technical Services
Mr S Cope	Director Urban Planning
Mr L Hitchcock	Executive Manager Legal Services
Ms K Johnson	Executive Manager Organisational Development
Mr Prendergast (Until 9.08pm)	Manager Statutory Planning
Mr M Scarfone (Until 8.45pm)	Planning Services Coordinator
Mr M Cosson (Until 9.08pm)	Senior Planning Officer
Mr J Rae	Strategic Land and Property Executive
Mr J Clark	Governance and Compliance Program Manager
Mr N Fimmano	Governance and Property Officer
Ms S Tranchita	Minute Secretary

At the commencement of the meeting there were 82 members of the public and one member from the Press in the Public Gallery and 60 members of the public in the Balcony/Outside area.

**4. APOLOGIES AND APPROVED LEAVE OF ABSENCE****4.1 APOLOGIES**

Nil.

**4.2 APPROVED LEAVE OF ABSENCE**

Cr D Macphail – City Ward

**5. ANNOUNCEMENTS BY THE PRESIDING MEMBER (WITHOUT DISCUSSION) AND DECLARATIONS BY MEMBERS****5.1 DECLARATIONS BY MEMBERS WHO HAVE NOT READ AND GIVEN DUE CONSIDERATION TO ALL MATTERS CONTAINED IN THE BUSINESS PAPERS PRESENTED BEFORE THE MEETING.**

Nil.

**5.2 DECLARATIONS BY MEMBERS WHO HAVE RECEIVED AND NOT READ THE ELECTED MEMBERS BULLETIN.**

Nil.

## **6. QUESTION TIME**

### **6.1 Melville Residents and Ratepayers Association**

#### Question 1

The Mayor advised that the question raised was in relation to the issues of disclosure, that many of those present in the gallery have read in the newspapers, the integrity of the City has been raised and in particular one of its officers. The Mayor then referred this question to the Chief Executive Officer for a response.

#### Response

The Chief Executive Officer read out a prepared media response on this matter as below;

***Subject: Commission declares no misconduct for City Officer  
Date: Thursday, 6 April 2017***

*The Public Sector Commission has found no minor misconduct in relation to allegations against City of Melville Officer Mr Todd Cahoon, Manager Healthy Melville, and his involvement with the Wave Park Group*

*City of Melville Chief Executive Officer Dr Shayne Silcox said the Commission had assessed information provided voluntarily by the City, which was submitted as a result of an internal review completed in response to recent allegations.*

*“Not only did the City not find any misconduct, but the Commission has now also assessed the allegations and concluded they do not constitute minor misconduct as defined within s. 4(d) of the Corruption, Crime and Misconduct Act 2003 (CCM Act)” Dr Silcox said.*

*“The Commission has advised it will take no further action in relation to the matter.*

*“One would now expect an apology from those who made, and continue to make, damaging accusations (audience interruptions) without any regard for due process, fairness and equity, particularly after the City had assured them an appropriate investigation had been conducted, and found no misconduct.*

*“As Chief Executive Officer I would hope the media and the community understand the personal impacts, stress and trauma, (audience interruptions) that are caused when unfounded and unsubstantiated allegations are bandied around recklessly. This leads me to question why those making the allegations would broadcast them so widely without appropriate due process of confidentially, other than it would seem on the face of it, to discredit the City and its officers.”*

**6. QUESTION TIME – CONTINUED**Question 2

*At the Special Meeting of Electors held on the 15 March 2017, it was made clear that the City's proposed \$15.88 sqm per/ annum rent for prime riverfront land was significantly less than the market price for similar parcels of land in the industrial areas of Welshpool and near the airport, and just a fraction more than what is available at Kwinana Beach. How does the City justify the apparent discount given to the Wave Park Group for what is prime riverfront land with great views across the river to the City?*

Response

The rate of value that is proposed by the Wave Park Group aligns with the City's independent valuation report and takes into account the current zoning that lies within the Tompkins Park Precinct.

**6.2 Mr E Nielsen – Booragoon**Question 1

*With reference to the publications in the media concerning matters related to the proposed Wave Park and reported to the Corruption and Crime Commission accordingly, would it not be prudent for Council to postpone dealing with tonight's somewhat rushed Item 2 'Ground Lease for Wave Park Surf Sports Recreation and Leisure Facility' until after the Commissioner has assessed the various submissions and responded accordingly?*

Response

Once the City was aware of allegations first raised at the Special Meeting of Electors on 15 March 2017 it undertook an investigation of the matters. There were no findings of misconduct. Due to the public interest in this matter the investigation and findings were sent to the Public Sector Commissioner, the Crime and Corruption Commission and the Department of Local Government and Communities. No corruption was found by the officers.

Question 2

*If Council were to proceed with this Item 2 tonight would it not be disrespectful to the office of the Commissioner and show disregard for due process, something that could have ramifications should the Commissioner find something untoward?*

Response

The question has been answered that no corruption has been found.

## **6. QUESTION TIME – CONTINUED**

### **6.3 Ms J Le-Fevre – Melville**

#### Question 1

*Melville Bowling Club/Wave Park*

*A major reason given by the Council in support of the proposal is the commercial return on the land. If this is the case, why were no other options considered?*

#### Response

The ground lease return is only one of the benefits to City of Melville residents that the Council considered in making its decision to approve the Wave Park Proposal. The proposal achieves recreational and sporting benefits, increased activation for Tompkins Park Recreational Reserve, increased diversity and increased regional tourism benefits.

The City of Melville undertook an extended eight week public notice and advertising program and sought submissions from the Public and alternative proposals to the Wave Park proposals. The Council considered the submissions received and resolved to approve the Wave Park proposal as it met the City's key objectives as highlighted.

#### Question 2

*Melville has a significant number of ratepayers – how many would be prepared, as I am, to pay a levy of a few extra dollars in order to make the Melville Bowling Club a viable commercial proposition to remain where it is?*

#### Response

The City does not have this information from any survey conducted by the City.

## **6. QUESTION TIME – CONTINUED**

### **6.4 Mr M Nichol, Attadale**

#### Question 1

*Has an enquiry been made as to why Wave Park Group were refused their application for a Wave Park at two metropolitan Towns, believed to be Claremont and Subiaco? I have not confirmed this to date.*

#### Response

Mr Clark read a response from Mr Ross, Wave Park Group. "We, the Wave Park Group, have in the past discussed possible sites with the Cities of Subiaco, Stirling, Perth, Joondalup, South Perth, Canning Cockburn, Fremantle, Armadale, Swan and the Town of Victoria Park as well as a range of other private land holders. We have not had a conversation with the Town of Claremont. The proposal for the development of the Subiaco oval was presented to the executive team at the City of Subiaco, who were highly supportive of it. However, the site required the buy in of State Government as part of the integrated solution to that site and the relocation of the WA Football Commission etc. We (Wave Park Group) submitted an unsolicited bid for the site to the Department of lands, we were invited to present to the Minister's representative and a room fully of DG's, being Director Generals, from the department over a two hour period. The proposal was referred up to Cabinet for consideration, but ultimately was not progressed as the former Liberal Government had alternative plans for the site. I understand high density, high rise apartment towers, which would have delivered a higher capital return to the state but a lessor outcome in our view".

#### Question 2

*Has an examination been made of the paid up capital of Wave Park Group, who are the Directors and the location of the registration of Wave Park Group.*

#### Response

This information is available via an Australian Securities and Investments Commission search.

#### Question 3

*Has an examination been made of the business experience and credibility of the Directors and particularly Andrew Ross?*

#### Response

A risk assessment report was commissioned by the City and satisfied the City's due diligence.

#### Question 4

*Are Councilors aware that this project is substantially larger than Subiaco (Domain) Stadium in area?*



## **6. QUESTION TIME – CONTINUED**

### Response

Mr Clark read a response from Mr Ross. "I have attached a plan showing the extent of the proposed development at Subiaco oval which incorporated the earlier recti-linear lagoon technology. The lagoon proposed for Subiaco oval was just less than 4 hectares in area compared to the cove at Tompkins Park, being approximately 2.2 hectares in area. (a difference of 45%). The overall development footprint for the Subiaco proposal was approximately 7.5 hectares, compared to Tompkins Park at 4.1 hectares(again, a difference of 45%)".

### Question 5

*I have worked with a hydraulic engineer to produce a sketch to determine the water depth required to support a 1.7 metre high wave and this depth requires the project to go more than 1 metre below the water table, or else the wall to be more than a meter above what is currently proposed. As I have commented several times, this project requires more engineering information, before an authoritative decision can be made! I will endeavour to arrange a copy of this sketch to Councillors prior to the meeting. Does the City approve a building permit without appropriate drawings?*

### Response

The City would not approve a building or provide a development approval without drawings being carefully examined.

### Question 6

*Should the Water Authority disallow such a project on this item, Mr. Ross may then decide to produce a smaller wave within a smaller pool, therefore your Lease Agreement must stipulate that WPG is to produce a 1.7 metre wave over their stipulated pool area, which I think may be around 3 hectares. · The point to be considered is that Ross requests he develop and operate this project without "impediment" from the Council, so once the Lease is signed the City has no control over what goes on behind the walls!*

### Response

*Mr Ross advises that "the water table site is at approximately 1.5m below ground level, although it varies to some extent across the site and between seasons. The maximum depth of the Cove is 3.5m but it gets shallower than this relatively quickly. Approximately 80% of the water body would be shallower than 1.5m. The site also falls approximately 2m from Canning Highway to the northern boundary of the site. While these matters require a site survey and further engineering, we expect the northern boundary of the site will require a vegetated batter of between 2m and 2.5m in height as per our prior correspondence on this point."*

## **6. QUESTION TIME – CONTINUED**

### **6.5 Mr O'Rourke – Attadale**

#### Question 1

The Chief Executive Officer is reported to have conducted an internal review on allegations of conflict of *interest and has found no basis to support them. Why has the City and Council refused to accept or acknowledge requests for an independent investigation? Does the Council believe that it is appropriate to proceed with authorisation for signing the lease given the allegations of conflict of interest being made?*

#### Response

The response from the City has been investigated independently by the Public Sector Commissioner.

### **6.6 Ms N Churchill – Melville**

#### Question 1

*Can you assure me that the City of Melville has followed due process in assuring that all groups and businesses were able to put in a proposal or tender for the opportunity to lease the current Melville Bowling site and surrounding area?*

#### Response

The City has followed due process and adhered to the Public Notice and Advertising requirements under Section 3.59 of the *Local Government Act 1995* and sought submissions from the Public and any other party that wished to submit an alternative proposal to the City.

#### Question 2

*How is it that a commercial business can lease land at the same rate as a not for profit sport and recreation club? Should the land lease price be at a commercial rate?*

#### Response

The lease rental rate offered is substantially higher than a not for profit sport and recreation club and has been assessed independently by a licensed valuer in their report to the City.

#### Question 3

*Do you not see that there is a considerable traffic and safety issue/concern in putting a large venue on land that only has one street access – that of the busy Canning Highway?*

#### Response

These issues will be addressed by the relevant assessing agencies when the Lessee lodges its development application.

**6. QUESTION TIME – CONTINUED**Question 4

*Does the Council feel concerned that there could be considerable environmental impact (particularly with regard to water and noise) to the adjacent Swan River and households of having a generator and equipment necessary to operate a wave machine on site?*

Response

Again these concerns will be addressed in the Development Application stage with approvals required from the Department of Parks and Wildlife.

Question 5

*As the Council seems to be keen to grant the lease to the Wave Park Group can you please explain what clauses you plan to insert into the ground lease agreement i.e. to ensure the lease can't proceed if there is shown to be any detrimental noise, traffic, environmental and safety issues?*

Response

The draft lease is subject to discussion by Council tonight and these matters will be addressed.

**6.7 Mr R Kronberger, Applecross**Question 1

*A Wave Park Group 2015/16 proposal for the establishment of a wave pool on Subiaco Oval (Domain Stadium) involved a huge integrated multi-story residential apartment building. Will the Tompkins Park lease contain prohibitions on constructing or occupying any residential premises within the leased area?*

Response

The proposal does not include any residential development and the zoning of the site prohibits this use.

## 6. QUESTION TIME – CONTINUED

### Question 2

On 24 January 2017 the Department of Environment Regulation advised that

*"The site is contaminated and has been remediated such that it is suitable for the current land use, but may not be suitable for a more sensitive land use.*

*Therefore, the site is classified as "remediated for restricted use" and that*

*"In accordance with Department of Health advice, if groundwater is being, or is proposed to be abstracted, DER recommends that analytical testing should be carried out to determine whether the groundwater is suitable for its intended use."*

*"Where the land is part of a transaction=sale, mortgage or lease agreement, the land owners MUST PROVIDE WRITTEN DISCLOSURE {on the prescribed Form 6} of the site's status to any potential owner, mortgagee ...or lessee at least 14 days before the completion of the transaction. A copy of the disclosure must also be forwarded to DER"*

- a) *Has the required testing been carried out?*
- b) *If it has been carried out what were the results of the testing?*
- c) *Has the required Form 6 been duly prepared, signed and served? If not, will the City sign the proposed lease in breach of those statutory prohibitions or wait until 14 days after the required notices have been served?*

### Response

The City has satisfied its reporting obligations to Department of Environment and Regulation (DER) regarding the site classification.

### Question 3

- a) *The Chief Executive Officers' Business Case document refers only to an application and proposal from "WAVE PARK GROUP PTY LTD" but the lease that the City is proposing to sign is a lease to a company called "URBNSURF (PERTH) PTY LTD".*

*Does this not mean that there has never been an "unsolicited offer" from the lessee named in the lease so that a completely new process of consideration must now be undertaken in order to comply with the relevant legislation?*

- b) *When was this change made?*
- c) *Prior to the publication of the Agenda for the Council's 6 April 2017 meeting has the change ever been disclosed to enable ratepayers to make proper investigations and enquiries about the substitute company so close to the date on which the City is considering signing the proposed lease?*
- d) *Has the City made any enquiries about the directorships, shareholders and business experience of this substituted lessee?*
- e) *Has the City investigated what effect how a different capitalization, shareholding or experience may adversely affect the City's interests?*

## **6. QUESTION TIME – CONTINUED**

### Response

The Business Case references URBNSURF (Perth) as URBNSURF (Perth) Pty Ltd that was not incorporated at the time the Business Case was advertised. Further URBNSURF (Perth) Pty Ltd is a wholly owned subsidiary of Wave Park Group Pty Ltd.

### Question 4

*When an unlisted company, particularly with no track record in a particular field, is granted a lease, a prudent lessor will always require personal performance guarantees from the directors and shareholders with those guarantees to continue even if the lease is assigned to a third party. Such guarantees are also required even if a bond is established.*

*Will the Council ensure that the lease contains such provisions?*

### Response

The draft lease is before the Council tonight and all aspects of the lease will be discussed.

### Question 5

*The Business Case refers to an intention to seek a liquor license for the site.  
Will the lease:*

- a) Restrict the license to one business within the Wave Park?*
- b) Contain any limits on the size and permitted patronage numbers for such premises?*
- c) Prevent the licensed premises from operating when the wave pool is not operating or if the wave pool business fails or is closed down for any reason?*
- d) Allow the sale of alcohol on a retail business from the premises?*
- e) Make no decision and leave it up to the Licensing authority?*

### Response

Any application for Liquor License by the Lessee is subject to assessment by the relevant Liquor Licensing Authority.

**6. QUESTION TIME – CONTINUED**Question 6

*Will the lease allow the lessee to assign the lease or any share or interest in it or in any part of the leased area to any other person?*

*If an assignment takes place, will the City be entitled to receive any part of the price paid for such a dealing?*

*It is not uncommon for a lease rental to be reviewed upon any assignment. Will the proposed lease contain any such provision?*

Response

The draft lease is before the Council tonight and all aspects of the lease will be discussed.

Question 7

*It is common practice in commercial property leases to include a requirement for the lessee to pay to the lessor, in addition to the lease rental, a percentage of the turnover of any business conducted on the property.*

*Is such a provision to be included in the lease?*

Response

The draft lease is before the Council tonight and all aspects of the lease will be discussed.

Question 8

*Bearing in mind that:*

- a) The Wave Park director Andrew Ross has advised that there will be walls at least 2m high topped by security fences, presumably at least a further 2m in height, around a substantial part of the pool area; and*
- b) The artist's illustrations in the Business Case do not show such walls,*

*Is the City intending to grant the lease before it knows what excavations, structures, designs, materials, safety factors, appearance and other details of the proposed walls before agreeing to proceed with the lease?*

Response

The draft lease is conditional and does not commence unless the Lessee achieves its development approval prior to the lease commencing.

## 6. QUESTION TIME – CONTINUED

### Question 9

*Prior to the Council's January 2017 meeting the City wrote to ratepayers advising that;*

*"Should the proposal progress to the stage where the proponent submits a development application, necessary detailed assessments from key agencies such as Department of Parks and Wildlife, Main Roads WA, Department of Water, Department of Planning, Department of Lands and others will commence at that time"*

*Why is the City so eager to commit itself to a lease which will bind the City without the City knowing the results of those essential assessments, particularly as the same lease gives the lessee numerous avenues to walk away from the lease, apparently without penalty?*

*Does this not mean that the City will be in limbo for what could be a very long period with absolutely no benefit to the City unless and until the lessee decides to proceed or withdraw?*

*If, as indicated in the Agenda for the 6 April Council meeting, the lease will not commence until 2019 (or even much later if the City and the lessee agree) why is the lease made conditional on the*

*"the Bowling Club Premises being vacated, and all other interests relating to the Premises being terminated ,by 1 October 2018" ?*

### Response

These are two unrelated projects. The Bowling Club will be moving in any event, but the Wave Park cannot get access to commence operations until the bowls have moved.

### Question 10

*The City's Business case emphasises that the development will bring financial benefits to the City.*

- a) *How does this relate to the long rent-free period now disclosed?*
- b) *If the City enters into a purchase agreement with the State Government for the acquisition by the City of the foreshore Crown land, where will the funds for that purchase come from, particularly if the purchase price has to be raised before there is any rental income under the lease?*
- c) *Why, as set out on page 6 of the Business Case, is the City prepared to pay from its own funds or by allowing a reduction in the lease rental, to pay TO the developer the cost of the "demolition of the existing built forms on the Site" works (including, presumably, the demolition of the Bowling Club building, bowling greens, and parking areas)?*

### Response

The draft lease is before the Council tonight and all aspects of the lease will be discussed.



## **6. QUESTION TIME – CONTINUED**

### Question 11

*Has the City satisfied itself from proper enquiry and consultation that it will be possible to provide sewer installations on site sufficient for the anticipated large crowds which the developer anticipates attracting?*

*Similarly, what will be the electricity requirements and installations for power supplies?*

Who will pay for such works? If it is to be the lessee, does the lease provide for this?

### Response

The Lessee is required under the conditions of the Lease to satisfy itself as to service capacity before the lease commences.

### Question 12

*Representatives of the developer appear to now be stating that the wave park proposal was not put to the City until sometime in September 2016.*

*Previous advice indicated that the actual date was late in June 2016, while the developer's website states that it was 25 August 2016.*

*What was the date of the Wave Park Group Pty Ltd proposal?*

### Response

September 2016

### Question 13

*The Business Case (page 9) states that*

*"Following a meeting with the Department of Lands (DoL) on 6 September 2016, it is understood that the Department of Lands would be open to the disposition of the Crown lot to the City in order to unify the tenure of the Site"*

a) *Who arranged that meeting? And*

b) *Did one or more representatives of the developer attend that meeting with one or more Council officers and if so who was present at the meeting?*

### Response

The City has had no meetings with Department of Lands over this matter.



## **6. QUESTION TIME – CONTINUED**

### Question 14

*The draft lease provisions in the meeting agenda include a condition precedent that the lease is subject to the approval of the Western Australian Planning Commission, but that clause allows the lessee to waive that condition. Arguably, this makes the lease document illegal because it purports to give the lessee power to ignore that condition. On this basis alone, further serious consideration must be given to the proposed lease even if the other inadequacies are dealt with.*

### Response

Under the *Planning & Development Act 2005* the Western Australian Planning Commission is required to consent to the Lease as its term is greater than 20 years.

## **6.8 Ms S Swan – Booragoon**

### Question 1

*If the TARSC Report states the traffic could interfere with the Kwinana Freeway ramps on the eastern side of Canning Bridge (3.2.1) how will an additional load of up to 452 new cars be handled in an already congested freeway entrance?.*

### Response

Main Roads advice indicates that they have considered the development application, including the TARSC report and have provided conditional support subject to a number of conditions which include the applicant working with Main Roads to produce a traffic model which will inform future operational requirements.

## **6.9 Mr M Burns, Applecross**

### Question 1

*Could the Council debate the traffic implications of the proposed development in order to satisfy themselves of the impact of additional traffic is sustainable?*

### Response

Traffic issues will be assessed at development approval stage.

### Question 2

*Could the Council debate the community benefits since considerable concessions have been sought?*

### Response

The Responsible Authority Report to Council and the officer presentation will address this matter.

**6. QUESTION TIME – CONTINUED****6.10 Mr P McLarty, Bicton**Question 1

*Is it true the City of Melville Officer and the consultant he hired to help prepare the City of Melville Bowling Club strategy document were both shareholders in the Wave Park Company at the time they prepared the document?*

Question 2

*Is it the same Wave Park Company that made the unsolicited offer?*

Question 3

*How much did it cost ratepayers to prepare the strategy document?*

Response

Questions 1-3 were taken on notice.

**6.11 An Elector from Applecross who requested that their name be withheld.**Question 1:

*In view of the scale of the proposed development of traffic to be generated by the development, I respectfully request that the Council consider very carefully the traffic implications for Moreau Mews and Kintail Road with the extra 450 cars this development will generate.*

Response

The Responsible Authority Report which recommends conditional approval to the development contains an attachment from Main Roads WA which contains advice. MRWA provides support conditionally to the development requiring the applicant to meet certain conditions and to work with Main Roads to undertake certain requirements to satisfy Main Roads.

Question 2:

*Did the Council inspect the location of the signage of three towers on Kintail Road and Canning Highway to see if they were appropriately replaced?*

Response:

This City's officer confirmed that the signs were erected as required.

## **6. QUESTION TIME – CONTINUED**

### Question 3:

*I believe that I am directly affected by this and I was not informed about this Special General Meeting. I found out from talking to neighbours and I don't think the Council has followed the correct processes.*

### Response:

The formal consultation process included 187 letters issued to owners and occupiers of lots directly adjacent to the subject site, as well as lots that fall within the shadow that would be cast by the proposed development. Signs were located on each street frontage of the subject site. Advertisements within the Melville Times and plans for the proposal and all relevant information uploaded to the City's website. It is noted that the enquiry is from an owner or occupier from north/west of the subject and according to the shadow plans is not expected to be effected by overshadowing and those 187 owners/occupiers received notification of the DA by Council at the Special Council Meeting.

### **6.12 Ms Neville, Willagee**

#### Question 1

*With only about 30 parking bays, how many bays are for Wave employees?*

#### Question 2

*If accidents (road) occur are Council going to tell Atwell House to move to make more parking area?*

#### Response

Questions 1-2 were taken on notice

At 7.16pm Cr Woodall left the meeting and returned at 7.22pm.

## **7. DECLARATIONS OF INTEREST**

### **7.1 FINANCIAL INTERESTS**

Nil.

### **7.2 DISCLOSURE OF INTEREST THAT MAY CAUSE A CONFLICT**

- Item P17/3746 – Cr Schuster – Interest under the Code of Conduct
- Item P17/3746 – Cr Foxtton – Interest under the Code of Conduct
- Item P17/3746 - His Worship the Mayor - Interest under the Code of Conduct
- Item P17/3746 – Cr R Aubrey - Interest under the Code of Conduct
- Item P17/5544 – Amendment 2 – Cr Woodall - Interest under the Code of Conduct

## **8. APPLICATIONS FOR NEW LEAVES OF ABSENCE**

Nil.

## **9. IDENTIFICATION OF MATTERS FOR WHICH MEETING MAY BE CLOSED**

Nil.

At 7.27pm Cr Phelan left the meeting and returned at 7.30pm.  
At 7.30pm Mr Fimmano left the meeting and returned at 7.30pm.  
At 7.35pm Dr Silcox left the meeting and returned at 7.36pm  
At 7.36pm Cr Wieland left the meeting and returned at 7.37pm.  
At 7.41pm Mr Rae left the meeting and returned at 7.54pm.  
At 8.01pm Cr Wieland left the meeting and returned at 8.02pm.  
At 8.26pm Cr Aubrey left the meeting and returned at 8.29pm.  
At 8.30pm Ms Tranchita left the meeting and returned at 8.32pm  
At 8.35pm Mr Hitchcock left the meeting and returned at 8.39pm.

## **10. REPORTS OF THE CHIEF EXECUTIVE OFFICER**

At 6.39pm Cr Schuster having declared an interest in item P17/3746 left the meeting.

At 7.27pm Cr Foxtton having declared an interest in item P17/3746 left the meeting.

From 7.40pm to 8.50pm Mr Cope, Mr Prendergast and Mr Cosson provided a presentation to the Council.

**P17/3746 - DEVELOPMENT ASSESSMENT PANEL – MIXED USE DEVELOPMENT AT  
LOTS 19 AND 268 (NO.3-5) KINTAIL ROAD AND LOTS 3, 2, 1 AND 20 (NO. 906-912)  
CANNING HIGHWAY, APPLECROSS (REC) (ATTACHMENT)**

Disclosure of Interest

Item No.	P17/3746
Member	Mayor R Aubrey
Type of Interest	Interest under the Code of Conduct
Nature of Interest	Owner of property at 1/15 Kintail Road, Applecross
Request	Stay, Discuss and Vote
Decision of Council	Not Required

Disclosure of Interest

Item No.	P17/3746
Member	Cr Rebecca Aubrey
Type of Interest	Interest under the Code of Conduct
Nature of Interest	Father owns a property on Kintail Road, Applecross
Request	Stay, Discuss and Vote
Decision of Council	Not Required

Disclosure of Interest

Item No.	P17/3746
Member	Cr N Foxtton
Type of Interest	Interest under the Code of Conduct
Nature of Interest	JDAP Member – will likely sit on the panel which considers this Development Application
Request	Leave
Decision of Council	Not Required

Disclosure of Interest

Item No.	P17/3746
Member	Cr C Schuster
Type of Interest	Interest under the Code of Conduct
Nature of Interest	JDAP Member – scheduled to hear this matter on 19 April 2017
Request	Leave
Decision of Council	Not Required

**P17/3746 - DEVELOPMENT ASSESSMENT PANEL – MIXED USE DEVELOPMENT AT LOTS 19 AND 268 (NO.3-5) KINTAIL ROAD AND LOTS 3, 2, 1 AND 20 (NO. 906-912) CANNING HIGHWAY, APPLECROSS (REC) (ATTACHMENT)**

Ward : Applecross/Mt Pleasant  
 Category : Operational  
 Application Number : DA-2016-1455  
 Property : Lots 19 and 268 (No.3-5) Kintail Road and Lots 3, 2, 1 and 20 (No. 906-912) Canning Highway, Applecross  
 Proposal : Mixed use development  
 Applicant : Mr Dan Lees, TPG + PlaceMatch  
 Owner : Mr Scott Cameron, Applecross Development Pty  
 Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.  
 Previous Items : Nil.  
 Responsible Officer : Peter Prendergast  
 Manager Statutory Planning

**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 (eg 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>



**P17/3746 - DEVELOPMENT ASSESSMENT PANEL – MIXED USE DEVELOPMENT AT LOTS 19 AND 268 (NO.3-5) KINTAIL ROAD AND LOTS 3, 2, 1 AND 20 (NO. 906-912) CANNING HIGHWAY, APPLECROSS (REC) (ATTACHMENT)**

**KEY ISSUES / SUMMARY**

- Planning approval is sought from the Metro Central Joint Development Assessment Panel (JDAP) to construct a mixed use development comprising of three tower elements of up to 30 storeys at 3-5 Kintail Road and 906-912 Canning Highway, Applecross.
- The application by virtue of its cost of development is a mandatory JDAP application which was submitted to the City on 21 December 2016.
- City officers have completed the Responsible Authority Report (RAR) which is required to be submitted to the JDAP under the Planning and Development (Development Assessment Panel) Regulations 2011 on 7 April 2017.
- Prior to the consideration of the application by the JDAP, the details of the RAR including its recommendation to the JDAP is referred to Council for its information, consideration and endorsement.
- The recommendation of the RAR is that the JDAP approve the application.
- A copy of the resolution of the Special Meeting of Council will be forwarded to the JDAP as an attachment to the RAR.



**P17/3746 - DEVELOPMENT ASSESSMENT PANEL – MIXED USE DEVELOPMENT AT LOTS 19 AND 268 (NO.3-5) KINTAIL ROAD AND LOTS 3, 2, 1 AND 20 (NO. 906-912) CANNING HIGHWAY, APPLECROSS (REC) (ATTACHMENT)**

## **BACKGROUND**

### **Scheme Provisions**

MRS Zoning	:	Urban
LPS Zoning	:	C2 District Centre – Canning Bridge Activity Centre
R-Code	:	R-ACO
Use Type	:	Restaurant, Shop & Office
Use Class	:	Preferred uses

### **Site Details**

Lot Area	:	8,071m <sup>2</sup>
Street Tree(s)	:	One street tree (to remain)
Street Furniture (drainage pits etc)	:	Bus stop on Kintail Road (to remain) Light pole on Kintail Road (to remain) Street signs on Canning Highway (to remain) Crossovers on Canning Highway and Kintail Road (to be removed)
Site Details	:	See aerial photo above

## **DETAIL**

Development approval is sought from the Metro Central JDAP for a mixed use development comprising of three tower elements of up to 30 storeys.

Refer to the attached RAR for details of the development proposed by this application.

[3746 Responsible Authority Report \(RAR\) Form 1 Finbar](#)

[3746 3 5 Kintail Road and 906 912 Canning Highway Submission Summary](#)

[3746 Applicant's Report](#)

[3746 Canning Hwy Applecross Transport Assessment Rev 6.1](#)

[3746 DPAW Comments](#)

[3746 Final Amended Plans 3 5 Kintail and 908 912 Canning](#)

[3746 Greenstar Assessment](#)

[3746 Main Roads WA Comments](#)

[3746 Public Art Proposals](#)

[3746 Revised Acoustic Assessment](#)

[3746 Waste Management Plan](#)



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**P17/3746 - DEVELOPMENT ASSESSMENT PANEL – MIXED USE DEVELOPMENT AT LOTS 19 AND 268 (NO.3-5) KINTAIL ROAD AND LOTS 3, 2, 1 AND 20 (NO. 906-912) CANNING HIGHWAY, APPLECROSS (REC) (ATTACHMENT)****STAKEHOLDER ENGAGEMENT**

Refer to the RAR attached to this report.

**STATUTORY AND LEGAL IMPLICATIONS**

The City is not the determining authority for the application. The Planning and Development (Development Assessment Panel) Regulations require the City, as the responsible authority to which a DAP application is made, to provide a report to the Development Assessment Panel.

**FINANCIAL IMPLICATIONS**

None applicable.

**STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS**

There are no strategic, risk or environmental management implications with this application.

**POLICY IMPLICATIONS**

These are outlined in full within the RAR as attached to tis report.

**ALTERNATE OPTIONS AND THEIR IMPLICATIONS**

The recommendation of this report is for the Council to endorse the recommendation in the RAR for the JDAP to approve the application.

The Council may resolve not to endorse the recommendation within the RAR, however reasons should be provided in the usual manner to inform the members of the JDAP.

The minutes of the Special Meeting of Council will be attached to the RAR and forwarded to the JDAP for its consideration.

Where Council wishes to provide a deputation to the JDAP in support of a resolution, a nominated person on behalf of the Council may request to make a deputation at the JDAP meeting. The authorisation to grant a request to make a deputation rests with the Presiding Member of the JDAP.

**P17/3746 - DEVELOPMENT ASSESSMENT PANEL – MIXED USE DEVELOPMENT AT LOTS 19 AND 268 (NO.3-5) KINTAIL ROAD AND LOTS 3, 2, 1 AND 20 (NO. 906-912) CANNING HIGHWAY, APPLECROSS (REC) (ATTACHMENT)**

At 8.45 pm Mr Scarfone left the meeting  
At 8.45pm the meeting was adjourned  
At 8.52pm the meeting resumed.

**OFFICER RECOMMENDATION AND COUNCIL RESOLUTION (3746) APPROVAL**

At 8.53pm Cr Pazolli moved, seconded Cr Robartson –

**That the Metro Central Joint Development Assessment Panel be advised that the Council of the City of Melville endorses the recommendation of the Responsible Authority Report to approve the application for the proposed mixed use development comprising of three tower elements of up to 30 storeys at 3-5 Kintail Road and 906-912 Canning Highway, Applecross, subject to conditions.**

At 9.08pm the Mayor submitted the motion, which was declared **CARRIED (8/1)**

<b>Vote Result Summary</b>	
Yes	8
No	1

<b>Vote Result Detailed</b>	
Cr Aubrey	Yes
Cr Barling	Yes
Cr Barton	Yes
Cr Pazolli	Yes
Cr Phelan	Yes
Cr Robartson	Yes
Cr Wieland	Yes
Mayor Aubrey	Yes
Cr Woodall	No

At 9.08pm Cr Phelan moved, seconded Cr Aubrey –

**That the meeting be closed to the public to permit discussion on a confidential matter (Item M17/5544 – Ground Lease Agreement for Wave Park Surf Sports Recreation and Leisure Facility covered under section 5.23 (2) (c), (d) and (e) of the *Local Government Act 1995*.**

At 9.08pm the Mayor submitted the motion, which was declared

**CARRIED UNANIMOUSLY (9/0)**

At 9.08pm Messrs Prendergast and Cosson left the meeting

At 9.08pm Cr Robartson left the meeting and returned at 9.10pm

At 9.10pm Cr Schuster returned to the meeting.

At 9.10pm Cr Foxtan returned to the meeting.

At 9.23pm Dr Silcox left the meeting and returned at 9.34pm.

At 9.54pm Cr Woodall left the meeting and returned at 9.57pm.

At 10.07pm Cr Barling left the meeting and returned at 10.11pm.

At 10.30pm Cr Woodall left the meeting and returned at 10.35pm.

At 10.39pm Cr Foxtan left the meeting and returned at 10.42pm.

At 10.43pm Ms Tranchita left the meeting and returned at 10.46pm.

At 10.49pm Cr Wieland left the meeting and returned at 10.51pm.

At 10.56pm Mr Clark left the meeting and returned at 11.00pm.

At 12.17pm Mr Rae left the meeting and returned at 12.19pm.

At 12.36pm Mr Hitchcock left the meeting and returned at 12.39pm

At 1.08pm Cr Aubrey left the meeting and returned at 1.09pm.

At 9.23pm Cr Schuster seconded Cr Pazolli -

**That Standing Orders Local Law Clause 9.5 be suspended allowing Elected Members permission to speak more than once.**

At 9.23pm the Mayor submitted the motion, which was declared

**CARRIED UNANIMOUSLY (11/0)**

At 10.56pm Cr Aubrey moved, seconded Cr Schuster -

**That Standing Orders be reinstated**

At 10.56pm the Mayor submitted the motion, which was declared

**CARRIED UNANIMOUSLY (11/0)**

**CONFIDENTIAL ITEM M17/5544 – GROUND LEASE AGREEMENT FOR WAVE PARK  
SURF SPORTS RECREATION AND LEISURE FACILITY (REC) (CONFIDENTIAL  
ATTACHMENT)**Disclosure of Interest

Item No.	M17/5544
Member	Cr M Woodall
Type of Interest	Interest under the Code of Conduct
Nature of Interest	Employee of Law Firm Jackson McDonald
Request	Leave
Decision of Council	Not Required

The matter is confidential in accordance with section 5.23 (2) (c) of the *Local Government Act 1995*, a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting; (d) legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting; and (e) a matter that if disclosed would reveal – information that has commercial value to a person.

**CONFIDENTIAL ITEM M17/5544 – GROUND LEASE AGREEMENT FOR WAVE PARK SURF SPORTS RECREATION AND LEISURE FACILITY (REC) (CONFIDENTIAL ATTACHMENT)****OFFICER RECOMMENDATION (5544)****APPROVAL**

At 10.57pm Cr Phelan moved, seconded Cr Robartson –

**That the Council;**

- 1. Directs the Chief Executive Officer and the Mayor to sign and execute the ground lease agreement with Urbnsurf (Perth) Pty Ltd as contained in the Confidential Attachment: Ground Lease for Wave Park Surf Sports Recreation & Leisure Facility: Lot 39 (No. 596) Canning Hwy, Alfred Cove, dated 3 April 2017;**
- 2. Notes the following conditions precedent in the ground lease:-**

***“Clause 2.1 Conditions Precedent******(1) The Lessor and the Lessee agree that this Lease is conditional upon:******(a) the Lessor satisfying the following conditions precedent (Lessor’s Conditions Precedent):******(i) the Bowling Club Premises being vacated, and all other property interests relating to the Premises being terminated, by 1 October 2018;******(ii) the termination of all other leases, licences and other property interests relating to the Premises;******(iii) the Lessor obtaining the unconditional approval of the relevant Authority of only one of the following:******(A) firstly, agreement by the Lessor and the Department of Lands to the transfer of Part of Lot 9789 to the Lessor, or, if this is not able to be achieved;***

**CONFIDENTIAL ITEM M17/5544 – GROUND LEASE AGREEMENT FOR WAVE PARK SURF SPORTS RECREATION AND LEISURE FACILITY (REC) (CONFIDENTIAL ATTACHMENT)**

- (B) *secondly, to the granting of the lease by the Lessor to the Lessee of Part of Lot 9789 for a term of 30 years, or, if this is not able to be achieved;*
- (C) *thirdly, to the granting of the lease by the Lessor to the Lessee of Part of Lot 9789 for a term of 21 years,*
- (b) *the Lessee satisfying the following conditions precedent (Lessee's Condition Precedent):*
- (i) *the Lessee being reasonably satisfied with the results of its additional feasibility studies and investigations and technical enquiries and tests in respect of the Premises, including in particular the results of on-site geotechnical and environmental investigations;*
  - (ii) *the WAPC consenting to the Lease pursuant to the requirements of the Planning and Development Act 2005;*
  - (iii) *the Lessee entering into appropriate arrangements with services providers (including Western Power and the Department of Water) for the provision of essential services to operate the Wave Park;*
  - (iv) *the Lessee obtaining the Development Approvals on terms satisfactory to the Lessee and the Lessor (each acting reasonably);*
  - (v) *the Lessee obtaining 100% of the required unconditional project finance to construct the Development to operating stage, on terms satisfactory to the Lessee in its absolute discretion;*
  - (vi) *a demolition permits being issued to the Lessee for the demolition of the Bowling Club Premises (Demolition Permit); and*
  - (vii) *the Lessee obtaining a Building Permit enabling the commencement of the Development*
  - (viii) *the Lessee providing to the Lessor the Lease Guarantee and the Rehabilitation Guarantee;*
- by the 28 February 2019 or such later date as may be agreed by the Parties in writing (Sunset Date).*
- (2) *The Lessor and the Lessee agree that the Lessee's Conditions Precedent are for the benefit of the Lessee and may be waived (in part or in full) by the Lessee."*

**CONFIDENTIAL ITEM M17/5544 - GROUND LEASE AGREEMENT FOR WAVE PARK SURF SPORTS RECREATION & LEISURE FACILITY (REC) (CONFIDENTIAL ATTACHMENT)**

3. Notes the following ground lease terms as documented in the “lease schedule” attaching to the agreement

*“Item 1 Land and Premises*

*(1) Land*

- (i) Lot 39 on Diagram 17693 being the whole of the land comprised in Certificate of Title Volume 1185 Folio 584 (Lot 39); and*
- (ii) Reserve 35486, Lot 9789 being the land comprised in Crown Land Title LR3141 Folio 868 (Lot 9789).*

*Premises*

- (1) Subject to paragraph (2) below, that part of the Land identified on the Premises Plan as “Lease Area” and having an approximate area of 4.1 hectares.*
- (2) The Lessee and Lessor agree that:*
  - (a) the Lessee must obtain, within three months of the Commencement Date, a survey of the Premises at its expense (Survey); and*
  - (b) upon approval of the Survey by the Lessor, this Lease will be varied such that the sketch annexed hereto as Annexure 2, will be replaced by the Survey and become the Premises Plan.*

*Item 2 Term*

*If:*

- (1) the Condition Precedent in clause 2.1(a) (iii) (A) or (B) is satisfied, the term for the lease of the Premises will be 30 years; or*
- (2) the Condition Precedent in clause 2.1(a) (iii) (C) is satisfied, then the following will apply:*
  - the term for the lease of the Premises excluding Part of Lot 9789 will be 30 years; and*
  - the term for the lease of Part of Lot 9789 will be 21 years*

*Item 3 Further Term*

- (a) First Further Term*

*10 years.*

**CONFIDENTIAL ITEM M17/5544 - GROUND LEASE AGREEMENT FOR WAVE PARK SURF SPORTS RECREATION & LEISURE FACILITY (REC) (CONFIDENTIAL ATTACHMENT)**

**(b) Second Further Term**

**10 years.**

**Item 4 Commencement Date**

**10 Business Days from the date that all of the Conditions Precedent are satisfied.**

**Item 5 Rent**

- (1) Subject to paragraph (2) below, \$700,000 (Seven hundred thousand dollars) per annum plus GST, payable monthly in advance with the first instalment due on the Commencement Date.**
- (2) The Lessor agrees to provide the Lessee with a rent free period of 10 months commencing on the Commencement Date. provided that should the Condition Precedent in clause 2.1(a)(iii)(A) be satisfied, the Lessor agrees to provide the Lessee with an additional rent free period of 4 months such that the Lessee will be granted a total rent free period of 14 months.**

**Item 6 Rent Review Dates**

**CPI Review dates**

**Each anniversary of the Commencement Date in each year of the Term (including any Further Term and any period of holding over, if applicable), except the dates which are a Market Review Date.**

**Market Review dates**

**Every fifth year of the Term (which includes any Further Term and any period of holding over, if applicable).**

**Item 7 Required Purpose**

**Wave Park and any lawful ancillary use permitted under the reservation of the Premises.**

**Item 8 Amount of Lease Guarantee**

**The amount of the Lease Guarantee shall be at any point in time during the Term or any Further Term equal 12 months Rent under this Lease. As at the Commencement Date, the required amount will be \$700,000.**

**Item 9 Rehabilitation Guarantee**

**[\$to be determined by the Expert], as reviewed from time to time in accordance with the requirements of clause 13.**



**CONFIDENTIAL ITEM M17/5544 - GROUND LEASE AGREEMENT FOR WAVE PARK SURF SPORTS RECREATION & LEISURE FACILITY (REC) (CONFIDENTIAL ATTACHMENT)*****Item 10 Review Dates – Rehabilitation Guarantee******CPI Review dates***

***Each anniversary of the Commencement Date in each year of the Term (including any Further Term and any period of holding over, if applicable), except the dates which are a Market Review Date.***

***Rehabilitation Review dates***

***Every fifth year of the Term (which includes any Further Term and any period of holding over, if applicable).***

***Item 11 Additional Terms and Conditions******(11.1) Living Stream***

- (1) Subject to paragraph (2), the Lessee agrees to pay to the Lessor \$50,000.00 (or such lesser amount as may be agreed between the parties in writing) as a contribution towards the environmental costs incurred by the Lessor in connection with the upgrade of the “Living Stream” (Living Stream Contribution)***
- (2) The Parties acknowledge and agree that the Living Stream Contribution will be offset against any additional cost that may be imposed by a relevant Authority in the Development Approval to the extent that it applies to the Living Stream Drain.***

***(11.2) Cafe to be available to public***

***The Lessee must ensure that the café facilities to be operated by the Lessee as part of the Development are to be freely accessible by the general public at no cost at all times the Wave Park is open and operational.”***

The Mover and Seconder agreed to incorporate the amended text below into the Officer Recommendation.

**That the Council;**

- 1. Notes the following conditions precedent in the ground lease:-**
- 2. Directs the Chief Executive Officer and the Mayor to sign and execute the ground lease agreement, as amended by the Council, with Urbnsurf (Perth) Pty Ltd, as contained in the Confidential Attachment: Ground Lease for Wave Park Surf Sports Recreation & Leisure Facility: Lot 39 (No. 596) Canning Hwy, Alfred Cove, dated 5 April 2017;**

**CONFIDENTIAL ITEM M17/5544 - GROUND LEASE AGREEMENT FOR WAVE PARK  
SURF SPORTS RECREATION & LEISURE FACILITY (REC) (CONFIDENTIAL  
ATTACHMENT)****2.1 Conditions Precedent**

- (1) The Lessor and the Lessee agree that this Lease (with the exception of clauses 2.1 – 2.5 (inclusive), 12,13 and 24) is conditional upon:**
  - (a) the Lessor satisfying the following conditions precedent (Lessor's Conditions Precedent):**
    - (i) the Bowling Club Premises being vacated, and all other property interests relating to the Premises being terminated, by 1 October 2018;**
    - (ii) the termination of all other leases, licences and other property interests relating to the Premises;**
    - (iii) the Lessor obtaining the unconditional approval of the relevant Authority of only one of the following:**
      - (A) firstly, agreement by the Lessor and the Department of Lands to the transfer of Part of Lot 9789 to the Lessor, or, if this is not able to be achieved;**
      - (B) secondly, to the granting of the lease by the Lessor to the Lessee of Part of Lot 9789 for a term of 30 years, or, if this is not able to be achieved;**
      - (C) thirdly, to the granting of the lease by the Lessor to the Lessee of Part of Lot 9789 for a term of 21 years,**
  - (b) the Lessee satisfying the following conditions precedent (Lessee's Condition Precedent)**
    - (i) the Lessee being reasonably satisfied with the results of its additional feasibility studies and investigations and technical enquiries and tests in respect of the Premises, including in particular the results of on site geotechnical and environmental investigations;**
    - (ii) the WAPC consenting to the Lease pursuant to the requirements of the Planning & Development Act 2005;**
    - (iii) the Lessee entering into appropriate arrangements with services providers (including Western Power and the Department of Water) for the provision of essential services to operate the Wave Park;**
    - (iv) the Lessee obtaining the Development Approvals on terms satisfactory to the Lessee and the Lessor (each acting reasonably);**

- (v) the Lessee obtaining 100% of the required unconditional project finance to construct the Development to operating stage, on terms satisfactory to the Lessee in its absolute discretion together with a
- (vi) a demolition permit being issued to the Lessee for the demolition of the Bowling Club Premises (Demolition Permit);
- (vii) the Lessee obtaining a Building Permit enabling the commencement of the Development; and
- (viii) the Lessee providing to the Lessor the Lease Guarantee and the Rehabilitation Guarantee,

by 28 February 2019, or such later date as may be agreed by the Parties in writing and subject to the prior approval of the Council of the Lessor (Sunset Date).”

**3. Notes the following ground lease terms as documented in the “lease schedule” attaching to the agreement**

**“Item 1 Land & Premises**

**(1) Land**

- (a) Lot 39 on Diagram 17693 being the whole of the land comprised in Certificate of Title Volume 1185 Folio 584 (Lot 39); and
- (b) Reserve 35486, Lot 9789 being the land comprised in Crown Land Title LR3141 Folio 868 (Lot 9789).

**(2) Premises**

- (a) Subject to paragraph (b) below, that part of the Land identified on the Premises Plan as “Lease Area” and having an approximate area of 4.1 hectares.
- (b) The Lessee and Lessor agree that:
  - (i) the Lessee must obtain, within 3 months of the Commencement Date, a survey of the Premises at its expense (Survey); and
  - (ii) upon approval of the Survey by the Lessor, this Lease will be varied such that the sketch annexed hereto as Annexure 2, will be replaced by the Survey and become the Premises Plan.

**Item 2 Term**

**If:**

- (a) the Condition Precedent in clause 2.1(a)(iii)(A) or (B) is satisfied, the term for the lease of the Premises will be 30 years; or

**CONFIDENTIAL ITEM M17/5544 - GROUND LEASE AGREEMENT FOR WAVE PARK SURF SPORTS RECREATION & LEISURE FACILITY (REC) (CONFIDENTIAL ATTACHMENT)**

(b) the Condition Precedent in clause 2.1(a)(iii)(C) is satisfied, then the following will apply:

- the term for the lease of the Premises excluding Part of Lot 9789 will be 30 years; and
- the term for the lease of Part of Lot 9789 will be 21 years.

**Item 3 Further Term**

(a) First Further Term

10 years

(b) Second Further term

10 years

**Item 4 Commencement Date**

10 Business Days from the date that all of the Conditions Precedent are satisfied.

**Item 5 Rent**

- (1) Subject to paragraph (2) below, \$700,000 (Seven hundred thousand dollars) per annum plus GST, payable monthly in advance and as varied from time to time in accordance with the terms of this Lease.
- (2) The Lessor agrees to provide the Lessee with a rent free period of 6 months commencing on the Date for Completion (Rent Free Period). Provided that should the Condition Precedent in clause 2.1(a)(iii)(A) be satisfied, the Lessor agrees to provide the Lessee with an additional rent free period of 4 months such that the Lessee will be granted a total rent free period of 10 months. To avoid doubt, the rent free period shall commence on the Date for completion and continue for a period of 6 months or 10 months (as the case may be), with rent payments commencing on the date that is 6 months or 10 months (as the case may be) from the Date for Completion (rent Commencement date).

**CONFIDENTIAL ITEM M17/5544 - GROUND LEASE AGREEMENT FOR WAVE PARK SURF SPORTS RECREATION & LEISURE FACILITY (REC) (CONFIDENTIAL ATTACHMENT)****Item 6 Rent Review Dates****CPI Review dates**

Each anniversary of the Rent Commencement Date in each year of the Term (including any Further Term and any period of holding over, if applicable), except the dates which are a Market Review Date.

**Market Review dates**

Every fifth year of the Term (which includes any Further Term and any period of holding over, if applicable) on the anniversary of the Rent Commencement Date.

**Item 7 Required Purpose**

Wave Park and any lawful ancillary use permitted in respect of the Premises under the provisions of the Metropolitan Region Scheme.

**Item 8 Amount of Lease Guarantee**

The amount of the Lease Guarantee shall be at any point in time during the Term or any Further Term equal 12 months Rent under this Lease. As at the Commencement Date, the required amount will be \$700,000.

**Item 9 Rehabilitation Guarantee**

[\$[to be determined by the Expert], as reviewed from time to time in accordance with the requirements clause 13.

**Item 10 Review Dates – Rehabilitation Guarantee****CPI Review dates**

Each anniversary of the Commencement Date in each year of the Term (including any Further Term and any period of holding over, if applicable). Except the dates which are a Market Review Date.

**Rehabilitation Review Dates**

Every fifth year of the Term (which includes any Further Term and any period of holding over, if applicable).

**CONFIDENTIAL ITEM M17/5544 - GROUND LEASE AGREEMENT FOR WAVE PARK  
SURF SPORTS RECREATION & LEISURE FACILITY (REC) (CONFIDENTIAL  
ATTACHMENT)****Item 11 Additional Terms and Conditions****11.1 Living Stream**

- (1) Subject to paragraph (2) below, the Lessee agrees to pay to the Lessor \$50,000.00 (or such lesser amount as may be agreed between the Parties in writing) as a contribution towards the environmental costs incurred by the Lessor in connection with the upgrade of the “Living Stream” (Living Stream Contribution).**
- (2) The Parties acknowledge and agree that the Living Stream Contribution will be offset against any additional cost that may be imposed by a relevant Authority in the Development Approval to the extent that it applies to the Living Stream Drain.**

**11.2 Café to be available to public**

**The Lessee must ensure that the café facilities to be operated by the Lessee as part of the Development will have a general public access component at no cost at all times the Wave Park is open and operational.**

**4. That the Council includes a clause 30 to the Ground Lease to read as follows;****“1 LEASE DEPOSIT**

- (1) The Lessee must pay to the Lessor the Lease Deposit by the Lease Deposit Due Date.**
- (2) If the Lease Deposit is not paid by the Lease Deposit Due Date, or it is paid (fully or in part) by a cheque which is dishonoured on its first presentation, the Parties agree that this Lease is null and void.**
- (3) The Lessee and the Lessor acknowledge and agree that:**
  - (a) the Lease Deposit will be held on trust by the Lessor; and**
  - (b) in the event of a dispute, the Lessor agrees to hold the Lease Deposit and only deal with the Lease Deposit in accordance with a court order.**
- (4) Subject to paragraph (5) of this clause, the Lease Deposit is non-refundable.**

**CONFIDENTIAL ITEM M17/5544 - GROUND LEASE AGREEMENT FOR WAVE PARK  
SURF SPORTS RECREATION & LEISURE FACILITY (REC) (CONFIDENTIAL  
ATTACHMENT**

- (5) The Lessee acknowledges and agrees with the Lessor that the Lease Deposit may be refunded to the Lessee in the event that:
- (a) the Lessor is unable to satisfy the Lessor's Conditions Precedent by the Sunset Date; or
  - (b) if any the Lessee's Conditions Precedent have not been satisfied by the Sunset Date, the Lessor is satisfied (acting reasonably) that the Lessee has used best endeavours to satisfy the Lessee's Conditions Precedents by the dates provided in clause 2.1 or in any event by the Sunset Date. The Lessee must provide to the Lessor evidence within a reasonable period of time, as to the steps and actions taken by the Lessee to satisfy the Lessee's Conditions Precedent.
- (6) The Parties agree that the Lease Deposit will be repayable to the Lessee on satisfaction of the Lessee's Conditions Precedent by the Sunset Date.

*Lease Deposit means the amount of \$100,000;*

*Lease Deposit Due Date means the date that the Lease is executed by the Parties;*

5. That the Council includes a clause 31 to the Ground Lease to read as follows;

"31 Notwithstanding the indicated location of the Car Park Works on the Premises Plan, the Council does not support the location of such Car Park Works on the north eastern corner boundary of the Premises Plan and will make comment to that effect to the relevant approval assessing agency at the appropriate time."

6. That the Council amends clause 20.1 to the Ground Lease to read as follows;

"20.1 The Lessee must not assign the leasehold estate in the Premises nor sub-let, part with possession, or dispose of the Premises or any part of the Premises without the prior written consent of the Lessor and any other person whose consent is required under this Lease or at law."

At 11.01pm the meeting was adjourned

At 11.11pm the meeting resumed.

**CONFIDENTIAL ITEM M17/5544 - GROUND LEASE AGREEMENT FOR WAVE PARK SURF SPORTS RECREATION & LEISURE FACILITY (REC) (CONFIDENTIAL ATTACHMENT)****AMENDMENT 1**

At 11.12pm Cr Woodall moved, seconded Cr Schuster -

**That the Council amend the Officer's Recommendation by:**

**1. Replacing Recommendation 1 as follows:**

**"Requests the Chief Executive Officer to negotiate with Urbnsurf (Perth) Pty Ltd to amend the ground lease agreement on the following terms:**

- (a) Amending clause 9.6 such that the contamination costs borne by the City are capped at \$100,000;**
- (b) Amending clause 11.8 such that the exclusivity period is no more than 10 years;**
- (c) Amending Item 9 of the Schedule so that the Rehabilitation Guarantee is equal to the amount determined by the Expert or \$700,000, whichever is the greater;**
- (d) Amending clause 19 and Item 3 such that any further term beyond the initial 30 years is subject to Council approval;**
- (e) Amending Item 8 so that the Lease Guarantee amount is equivalent to 24 months' rent (if the Lessee agrees), but otherwise 18 months' rent, and updating the amount as at the Commencement Date accordingly."**

**2. Replacing the existing Recommendation 2 as follows:**

**"Authorises the Chief Executive Officer and the Mayor to sign and execute the ground lease agreement with Urbnsurf (Perth) Pty Ltd as contained in the Confidential Attachment: Ground Lease for Wave Park Surf Sports Recreation & Leisure Facility: Lot 39 (No. 596) Canning Hwy, Alfred Cove, dated 3 April 2017, subject to:**

- (a) The Chief Executive Officer incorporating into the ground lease the amendments contained in Recommendation 1; to the extent acceptable to urbnsurf(Perth)Pty Ltd. and**
- (b) Presenting the revised Ground Lease to an Elected Members Information Session prior to signing and executing the agreement."**

**3. Inserting a new Recommendation 3 as follows: " notes the following conditions precedent in the ground lease, subject to Recommendation 1**



**CONFIDENTIAL ITEM M17/5544 - GROUND LEASE AGREEMENT FOR WAVE PARK SURF SPORTS RECREATION & LEISURE FACILITY (REC) (CONFIDENTIAL ATTACHMENT)****2.1 Conditions Precedent**

(3) The Lessor and the Lessee agree that this Lease (with the exception of clauses 2.1 – 2.5 (inclusive), 12,13 and 24) is conditional upon:

(c) the Lessor satisfying the following conditions precedent (Lessor's Conditions Precedent):

- (i) the Bowling Club Premises being vacated, and all other property interests relating to the Premises being terminated, by 1 October 2018;
- (ii) the termination of all other leases, licences and other property interests relating to the Premises;
- (iii) the Lessor obtaining the unconditional approval of the relevant Authority of only one of the following:

(A) firstly, agreement by the Lessor and the Department of Lands to the transfer of Part of Lot 9789 to the Lessor, or, if this is not able to be achieved;

(B) secondly, to the granting of the lease by the Lessor to the Lessee of Part of Lot 9789 for a term of 30 years, or, if this is not able to be achieved;

(C) thirdly, to the granting of the lease by the Lessor to the Lessee of Part of Lot 9789 for a term of 21 years,

(d) the Lessee satisfying the following conditions precedent (Lessee's Condition Precedent)

- (i) the Lessee being reasonably satisfied with the results of its additional feasibility studies and investigations and technical enquiries and tests in respect of the Premises, including in particular the results of on site geotechnical and environmental investigations;
- (ii) the WAPC consenting to the Lease pursuant to the requirements of the *Planning & Development Act 2005*;
- (iii) the Lessee entering into appropriate arrangements with services providers (including Western Power and the Department of Water) for the provision of essential services to operate the Wave Park;
- (iv) the Lessee obtaining the Development Approvals on terms satisfactory to the Lessee and the Lessor (each acting reasonably);

**CONFIDENTIAL ITEM M17/5544 - GROUND LEASE AGREEMENT FOR WAVE PARK SURF SPORTS RECREATION & LEISURE FACILITY (REC) (CONFIDENTIAL ATTACHMENT)**

- (v) the Lessee obtaining 100% of the required unconditional project finance to construct the Development to operating stage, on terms satisfactory to the Lessee in its absolute discretion together with a project budget detailing construction costs for the Development;
- (vi) a demolition permit being issued to the Lessee for the demolition of the Bowling Club Premises (demolition permit);
- (vii) the Lessee providing to the Lessor the Lease Guarantee and the Rehabilitation Guarantee;

by 28 February 2019, or such later date as may be agreed by the Parties in writing and subject to the prior approval of the Council of the Lessor (Sunset Date).

**Item 1 Land & Premises**

- (1) Land
  - (a) Lot 39 on Diagram 17693 being the whole of the land comprised in Certificate of Title Volume 1185 Folio 584 (Lot 39); and
  - (b) Reserve 35486, Lot 9789 being the land comprised in Crown Title LR3141 Folio 868 (Lot 9789).
- (2) Premises
  - (a) Subject to paragraph (b) below, that part of the Land identified on the Premises Plan as "Lease Area" and having an approximate area of 4.1 hectares.
  - (b) The Lessee and Lessor agree that:
    - (i) the Lessee must obtain, within 3 months of the commencement Date, a survey of the Premises at its expense (survey); and
    - (ii) upon approval of the survey by the Lessor, this lease will be varied such that the sketch annexed hereto as Annexure 2, will be replaced by the Survey and become the Premises Plan.

**CONFIDENTIAL ITEM M17/5544 - GROUND LEASE AGREEMENT FOR WAVE PARK SURF SPORTS RECREATION & LEISURE FACILITY (REC) (CONFIDENTIAL ATTACHMENT)****Item 2 Term**

If:

- (a) the Condition Precedent in clause 2.1(a)(iii)(A) or (B) is satisfied, the term for the lease of the Premises will be 30 years; or
- (b) the Condition Precedent in clause 2.1(a)(iii)(C) is satisfied, then the following will apply;
  - (i) the term for the lease of Part of Lot 9789 will be 21 years.

**Item 3 Further Term**

- (a) First Further Term  
10 years
- (b) Second Further term  
10 years

**Item 4 Commencement Date**

10 Business Days from the date that all of the Conditions Precedent are satisfied.

**Item 5 Rent**

- (1) Subject to paragraph (2) below, \$700,000 (Seven hundred thousand dollars) per annum plus GST, payable monthly in advance and as varied from time to time in accordance with the terms of this Lease.
- (2) The Lessor agrees to provide the Lessee with a rent free period of 6 months commencing on the Date for Completion (Rent Free Period). Provided that should the Condition Precedent in clause 2.1(a)(iii)(A) be satisfied, the Lessor agrees to provide the Lessee with an additional rent free period of 4 months such that the Lessee will be granted a total rent free period of 10 months. To avoid doubt, the rent free period shall commence on the Date for completion and continue for a period of 6 months or 10 months (as the case may be), with rent payments commencing on the date that is 6 months or 10 months (as the case may be) from the Date for Completion (rent Commencement date).

**CONFIDENTIAL ITEM M17/5544 - GROUND LEASE AGREEMENT FOR WAVE PARK SURF SPORTS RECREATION & LEISURE FACILITY (REC) (CONFIDENTIAL ATTACHMENT)****Item 6 Rent Review Dates****CPI Review dates**

Each anniversary of the Commencement Date in each year of the Term (including any Further Term and any period of holding over, if applicable), except the dates which are a Market Review Date.

**Market Review dates**

Every fifth year of the Term (which includes any Further Term and any period of holding over, if applicable).

**Item 7 Required Purpose**

Wave Park and any lawful ancillary use permitted in respect of the Premises under the provisions of the Metropolitan Region Scheme.

**Item 8 Amount of Lease Guarantee**

The amount of the Lease Guarantee shall be at any point in time during the Term or any Further Term equal 12 months Rent under this Lease. As at the Commencement Date, the required amount will be \$700,000.

**Item 9 Rehabilitation Guarantee**

\$(to be determined by the Expert), as reviewed from time to time in accordance with the requirements clause 13.

**Item 10 Review Dates – Rehabilitation Guarantee****CPI Review dates**

Each anniversary of the Commencement Date in each year of the Term (including any Further Term and any period of holding over, if applicable). Except the dates which are a Market Review Date.

**Rehabilitation Review Dates**

Every fifth year of the Term (which includes any Further Term and any period of holding over, if applicable).

**CONFIDENTIAL ITEM M17/5544 - GROUND LEASE AGREEMENT FOR WAVE PARK SURF SPORTS RECREATION & LEISURE FACILITY (REC) (CONFIDENTIAL ATTACHMENT)**

**Item 11 Additional Terms and Conditions**

**11.1 Living Stream**

- (1) Subject to paragraph (2) below, the Lessee agrees to pay to the Lessor \$50,000.00 (or such lesser amount as may be agreed between the Parties in writing) as a contribution towards the environmental costs incurred by the Lessor in connection with the upgrade of the “Living Stream” (Living Stream Contribution).**
- (2) The Parties acknowledge and agree that the Living Stream Contribution will be offset against any additional cost that may be imposed by a relevant Authority in the Development Approval to the extent that it applies to the Living Stream Drain.**

**11.2 Café to be available to public**

**The Lessee must ensure that the café facilities to be operated by the Lessee as part of the Development will have a general public access component at no cost at all times the Wave Park is open and operational.**

At 11.36pm the Mayor submitted the motion, which was declared

**LOST (4/7)**

<b>Vote Result Summary</b>	
Yes	4
No	7

<b>Vote Result Detailed</b>	
Cr Barling	Yes
Cr Barton	Yes
Cr Pazolli	Yes
Cr Woodall	Yes
Cr Aubrey	No
Cr Foxtton	No
Cr Phelan	No
Cr Robartson	No
Cr Schuster	No
Cr Wieland	No
Mayor Aubrey	No

At 11.49pm Cr Woodall having declared an interest in amendment 2 left the meeting.

**CONFIDENTIAL ITEM M17/5544 - GROUND LEASE AGREEMENT FOR WAVE PARK SURF SPORTS RECREATION & LEISURE FACILITY (REC) (CONFIDENTIAL ATTACHMENT)**

**AMENDMENT 2**

At 11.50pm Cr Barton moved, seconded Cr Pazolli –

**That the Council, before signing the lease document takes steps to ensure that the lease is peer-reviewed by a second law firm, one experienced in contracts involving contaminated sites**

**Motion of Dissent with the Presiding Member's Ruling**

At 11.55pm Cr Pazolli moved, seconded Cr Barton, the following Procedural Motion in accordance with Clause 11.1(f) of Standing Orders Local Law 2003 -

**That the ruling of the Presiding Member relating to a statement by Cr Phelan be disagreed with.**

At 11.57pm the Mayor submitted the Procedural Motion which was declared

**LOST (3/7)**

<b>Vote Result Summary</b>	
Yes	3
No	7

Cr Aubrey	No
Cr Foxtton	No
Cr Phelan	No
Cr Robartson	No
Cr Schuster	No
Cr Wieland	No
Mayor Aubrey	No
Cr Barton	Yes
Cr Pazolli	Yes
Cr Barling	Yes

**CONFIDENTIAL ITEM M17/5544 - GROUND LEASE AGREEMENT FOR WAVE PARK SURF SPORTS RECREATION & LEISURE FACILITY (REC) (CONFIDENTIAL ATTACHMENT)**

**PROCEDURAL MOTION – QUESTION BE PUT**

At 12.01am Cr Schuster moved, seconded Cr Phelan the following procedural motion in accordance with Clause 11.1(d) of Standing Orders Local Law 2003 –

**That the question (Amendment 2) be now put.**

At 12.02am the Presiding Member submitted the motion which was declared

**CARRIED (9/1)**

<b>Vote Result Summary</b>	
Yes	9
No	1

<b>Vote Result Detailed</b>	
Cr Aubrey	Yes
Cr Barling	Yes
Cr Foxtton	Yes
Cr Pazolli	Yes
Cr Phelan	Yes
Cr Robartson	Yes
Cr Schuster	Yes
Cr Wieland	Yes
Mayor Aubrey	Yes
Cr Barton	No

**AMENDMENT 2**

**That the Council, before signing the lease document takes steps to ensure that the lease is peer-reviewed by a second law firm, one experienced in contracts involving contaminated sites.**

At 12.03am the Mayor submitted the amendment, which was declared

**LOST (2/8)**

**CONFIDENTIAL ITEM M17/5544 - GROUND LEASE AGREEMENT FOR WAVE PARK SURF SPORTS RECREATION & LEISURE FACILITY (REC) (CONFIDENTIAL ATTACHMENT)**

<b>Vote Result Summary</b>	
Yes	2
No	8

<b>Vote Result Detailed</b>	
Cr Barton	Yes
Cr Pazolli	Yes
Cr Aubrey	No
Cr Barling	No
Cr Foxtton	No
Cr Phelan	No
Cr Robartson	No
Cr Schuster	No
Cr Wieland	No
Mayor Aubrey	No

At 12.04am Cr Woodall returned to the meeting

**AMENDMENT 3**

At 12.04am Cr Aubrey moved, seconded Cr Foxtton –

**That the Council amend clause 2.1(1) to incorporate clause 30 and such parts of clause 7 as determined necessary for the purpose of satisfying the Conditions Precedent. It will therefore read:**

**“(1) The Lessor and the Lessee agree that this Lease (with the exception of clauses 2.1 - 2.5 (inclusive), 7, 12, 13, 24 and 30) is conditional upon...”**

**Subject to the CEO ensuring that the Lessee’s insurance cover in terms of clause 7 is in force prior to the commencement of any works on the premises in order to enable the Lessee to comply with the Conditions Precedent, and , through its solicitors make the necessary changes to the lease agreement, administratively, in order to give effect there to.**

At 12.05am the Mayor submitted the motion, which was declared

**CARRIED UNANIMOUSLY (11/0)**

**AMENDMENT 4**

At 12.06am Cr Schuster moved, seconded Cr Pazolli -

**That the Council notes that rates and taxes become payable from the commencement date as defined in the lease.**

At 12.08am the Mayor submitted the amendment which was declared

**CARRIED UNANIMOUSLY (11/0)**



**CONFIDENTIAL ITEM M17/5544 - GROUND LEASE AGREEMENT FOR WAVE PARK SURF SPORTS RECREATION & LEISURE FACILITY (REC) (CONFIDENTIAL ATTACHMENT)**

**AMENDMENT 5**

At 12.10am Cr Schuster moved, seconded Cr Pazolli -

**That the Council delete clauses 9.7(2) and 9.7(3)**

At 12.22am the Mayor submitted the motion, which was declared

**CARRIED (7/4)**

<b>Vote Result Summary</b>	
Yes	7
No	4

<b>Vote Result Detailed</b>	
Cr Aubrey	No
Cr Phelan	No
Cr Robartson	Yes
Cr Wieland	No
Mayor Aubrey	Yes
Cr Barling	Yes
Cr Barton	Yes
Cr Foxtton	No
Cr Pazolli	Yes
Cr Schuster	Yes
Cr Woodall	Yes

**PROCEDURAL MOTION – QUESTION BE PUT**

At 12.22am Cr Robartson moved, seconded Cr Phelan the following procedural motion in accordance with Clause 11.1(d) of Standing Orders Local Law 2003 –

**That the substantive motion as amended be now put.**

At 12.25am the Presiding Member submitted the motion which was declared

**LOST (5/6)**

<b>Vote Result Summary</b>	
Yes	5
No	6

<b>Vote Result Detailed</b>	
Cr Aubrey	Yes
Cr Phelan	Yes
Cr Robartson	Yes
Cr Wieland	Yes
Mayor Aubrey	Yes
Cr Barling	No
Cr Barton	No
Cr Foxtton	No
Cr Pazolli	No
Cr Schuster	No
Cr Woodall	No

**CONFIDENTIAL ITEM M17/5544 - GROUND LEASE AGREEMENT FOR WAVE PARK SURF SPORTS RECREATION & LEISURE FACILITY (REC) (CONFIDENTIAL ATTACHMENT)**

**AMENDMENT 6**

At 12.26am Cr Schuster moved, seconded Cr Pazolli -

**That the Council add to recommendation 1, as amended in this resolution, with the matter to be referred to a Special Meeting of Council in the event that the parties can't agree to execute the lease**

At 12.28am the Mayor submitted the amendment, which was declared

**CARRIED UNANIMOUSLY (11/0)**

**PROCEDURAL MOTION - ADJOURNMENT OF MEETING**

At 12.29am Cr Pazolli moved, seconded Cr Barton -

**That the meeting be adjourned**

At 12.29am the Mayor submitted the motion, which was declared

**LOST (4/7)**

<b>Vote Result Summary</b>	
Yes	4
No	7

<b>Vote Result Detailed</b>	
Cr Barling	Yes
Cr Barton	Yes
Cr Pazolli	Yes
Cr Woodall	Yes
Cr Aubrey	No
Cr Foxtton	No
Cr Phelan	No
Cr Robartson	No
Cr Schuster	No
Cr Wieland	No
Mayor Aubrey	No

**CONFIDENTIAL ITEM M17/5544 - GROUND LEASE AGREEMENT FOR WAVE PARK SURF SPORTS RECREATION & LEISURE FACILITY (REC) (CONFIDENTIAL ATTACHMENT)**

**AMENDMENT 7**

At 12.34am Cr Pazolli moved, seconded Cr Barton -

**20.1 No assignment or sub-letting without consent**

**That the Council ensure that the Lessee must not assign the leasehold estate in the Premises nor sub-let, part with possession, or dispose of the Premises or any part of the Premises without the prior written consent of the Lessor, which consent may be withheld in the Lessor's absolute discretion, and any other person whose consent is required under this Lease or at law.**

At 12.37am the Mayor submitted the amendment, which was declared

**LOST (3/8)**

<b>Vote Result Summary</b>	
Yes	3
No	8

<b>Vote Result Detailed</b>	
Cr Barton	Yes
Cr Pazolli	Yes
Cr Woodall	Yes
Cr Aubrey	No
Cr Barling	No
Cr Foxtton	No
Cr Phelan	No
Cr Robartson	No
Cr Schuster	No
Cr Wieland	No
Mayor Aubrey	No

**PROCEDURAL MOTION – QUESTION BE PUT**

At 12.38am Cr Aubrey moved, seconded Cr Robartson the following procedural motion in accordance with Clause 11.1(d) of Standing Orders Local Law 2003 –

**That the substantive motion as amended be now put.**

At 12.38am the Presiding Member submitted the motion which was declared

**LOST (5/6)**

**CONFIDENTIAL ITEM M17/5544 - GROUND LEASE AGREEMENT FOR WAVE PARK SURF SPORTS RECREATION & LEISURE FACILITY (REC) (CONFIDENTIAL ATTACHMENT)**

<b>Vote Result Summary</b>	
Yes	5
No	6

<b>Vote Result Detailed</b>	
Cr Aubrey	Yes
Cr Phelan	Yes
Cr Robartson	Yes
Cr Wieland	Yes
Mayor Aubrey	Yes
Cr Barling	No
Cr Barton	No
Cr Foxtton	No
Cr Pazolli	No
Cr Schuster	No
Cr Woodall	No

**AMENDMENT 8**

At 12.42am Cr Woodall moved, seconded Cr Barton -

**That the Council requests the Chief Executive Officer to amend the ground lease agreement on the following terms;**

- (a) Amending clause 9.6 such that the contamination costs borne by the City are capped at \$100,000;**

At 12.46am the Mayor submitted the Amendment, which was declared

**LOST (5/6)**

<b>Vote Result Summary</b>	
Yes	5
No	6

<b>Vote Result Detailed</b>	
Cr Barling	Yes
Cr Barton	Yes
Cr Pazolli	Yes
Cr Robartson	Yes
Cr Woodall	Yes
Cr Aubrey	No
Cr Foxtton	No
Cr Phelan	No
Cr Schuster	No
Cr Wieland	No
Mayor Aubrey	No

**CONFIDENTIAL ITEM M17/5544 - GROUND LEASE AGREEMENT FOR WAVE PARK SURF SPORTS RECREATION & LEISURE FACILITY (REC) (CONFIDENTIAL ATTACHMENT)**

**AMENDMENT 9**

At 12.47am Cr Woodall moved, seconded Cr Barton -

**(b) Amending clause 11.8 such that the exclusivity period is no more than 10 years;**

At 12.54am the Mayor submitted the amendment, which was declared

**LOST (3/8)**

<b>Vote Result Summary</b>	
Yes	3
No	8

<b>Vote Result Detailed</b>	
Cr Barton	Yes
Cr Pazolli	Yes
Cr Woodall	Yes
Cr Aubrey	No
Cr Barling	No
Cr Foxtton	No
Cr Phelan	No
Cr Robartson	No
Cr Schuster	No
Cr Wieland	No
Mayor Aubrey	No

**AMENDMENT 10**

At 12.55am Cr Woodall moved, seconded Cr Barton -

**(c) Amending Item 9 of the Schedule so that the Rehabilitation Guarantee is equal to the amount determined by the Expert or \$700,000, whichever is the greater;**

At 12.57am the Mayor submitted the amendment, which was declared

**LOST (4/7)**

**CONFIDENTIAL ITEM M17/5544 - GROUND LEASE AGREEMENT FOR WAVE PARK SURF SPORTS RECREATION & LEISURE FACILITY (REC) (CONFIDENTIAL ATTACHMENT)**

<b>Vote Result Summary</b>	
Yes	4
No	7

<b>Vote Result Detailed</b>	
Cr Barling	Yes
Cr Barton	Yes
Cr Pazolli	Yes
Cr Woodall	Yes
Cr Aubrey	No
Cr Foxtan	No
Cr Phelan	No
Cr Robartson	No
Cr Schuster	No
Cr Wieland	No
Mayor Aubrey	No

**AMENDMENT 11**

At 12.58am Cr Woodall moved, seconded Cr Barton -

**(d) Amending clause 19 and Item 3 such that any further term beyond the initial 30 years is subject to Council approval;**

At 12.58am the Mayor submitted the amendment, which was declared

**LOST (5/6)**

<b>Vote Result Summary</b>	
Yes	5
No	6

<b>Vote Result Detailed</b>	
Cr Barling	Yes
Cr Barton	Yes
Cr Pazolli	Yes
Cr Robartson	Yes
Cr Woodall	Yes
Cr Aubrey	No
Cr Foxtan	No
Cr Phelan	No
Cr Schuster	No
Cr Wieland	No
Mayor Aubrey	No

**CONFIDENTIAL ITEM M17/5544 - GROUND LEASE AGREEMENT FOR WAVE PARK SURF SPORTS RECREATION & LEISURE FACILITY (REC) (CONFIDENTIAL ATTACHMENT)**

**AMENDMENT 12**

At 12.59am Cr Woodall moved, seconded Cr Barton -

- (e) Amending Item 8 so that the Lease Guarantee amount is equivalent to 24 months' rent (if the Lessee agrees), but otherwise 18 months' rent, and updating the amount as at the Commencement Date accordingly."**

At 1.00am the Mayor submitted the amendment, which was declared

**LOST (4/7)**

<b>Vote Result Summary</b>	
Yes	4
No	7

<b>Vote Result Detailed</b>	
Cr Barling	Yes
Cr Barton	Yes
Cr Pazolli	Yes
Cr Woodall	Yes
Cr Aubrey	No
Cr Foxtan	No
Cr Phelan	No
Cr Robartson	No
Cr Schuster	No
Cr Wieland	No
Mayor Aubrey	No

**PROCEDURAL MOTION – QUESTION BE PUT**

At 1.15am Cr Woodall moved, seconded Cr Aubrey the following procedural motion in accordance with Clause 11.1(d) of Standing Orders Local Law 2003 –

**That the substantive motion as amended be now put.**

At 1.16am the Mayor submitted the motion which was declared

**CARRIED (7/4)**

**CONFIDENTIAL ITEM M17/5544 - GROUND LEASE AGREEMENT FOR WAVE PARK SURF SPORTS RECREATION & LEISURE FACILITY (REC) (CONFIDENTIAL ATTACHMENT)**

<b>Vote Result Summary</b>	
Yes	7
No	4

<b>Vote Result Detailed</b>	
Cr Aubrey	Yes
Cr Phelan	Yes
Cr Robartson	Yes
Cr Schuster	Yes
Cr Wieland	Yes
Cr Woodall	Yes
Mayor Aubrey	Yes
Cr Barling	No
Cr Barton	No
Cr Foxton	No
Cr Pazolli	No

**COUNCIL RESOLUTION (5544)**

**APPROVAL**

**That the Council;**

- 1. Notes the following conditions precedent in the ground lease:-**
  
- 2. Directs the Chief Executive Officer and the Mayor to sign and execute the ground lease agreement, as amended by the Council, with Urbnsurf (Perth) Pty Ltd, as contained in the Confidential Attachment: Ground Lease for Wave Park Surf Sports Recreation & Leisure Facility: Lot 39 (No. 596) Canning Hwy, Alfred Cove, dated 5 April 2017.**

**Clause 2.1 Conditions Precedent**

**The Lessor and the Lessee agree that this Lease (with the exception of clauses 2.1 - 2.5 (inclusive), 7, 12, 13, 24 and 30) is conditional upon..."**

**Subject to the CEO ensuring that the Lessee's insurance cover in terms of clause 7 is in force prior to the commencement of any works on the premises in order to enable the Lessee to comply with the Conditions Precedent, and, through its solicitors make the necessary changes to the lease agreement, administratively, in order to give effect thereto.**

- (1) The Lessor and the Lessee agree that this Lease (with the exception of clauses 2.1 – 2.5 (inclusive), 12, 13 and 24) is conditional upon:**
  - (a) the Lessor satisfying the following conditions precedent (Lessor's Conditions Precedent):**
    - (i) the Bowling Club Premises being vacated, and all other property interests relating to the Premises being terminated, by 1 October 2018;**



**CONFIDENTIAL ITEM M17/5544 - GROUND LEASE AGREEMENT FOR WAVE PARK  
SURF SPORTS RECREATION & LEISURE FACILITY (REC) (CONFIDENTIAL  
ATTACHMENT)**

- (ii) the termination of all other leases, licences and other property interests relating to the Premises;
- (iii) the Lessor obtaining the unconditional approval of the relevant Authority of only one of the following:
  - (A) firstly, agreement by the Lessor and the Department of Lands to the transfer of Part of Lot 9789 to the Lessor, or, if this is not able to be achieved;
  - (B) secondly, to the granting of the lease by the Lessor to the Lessee of Part of Lot 9789 for a term of 30 years, or, if this is not able to be achieved;
  - (C) thirdly, to the granting of the lease by the Lessor to the Lessee of Part of Lot 9789 for a term of 21 years,
- (b) the Lessee satisfying the following conditions precedent (Lessee's Condition Precedent)
  - (i) the Lessee being reasonably satisfied with the results of its additional feasibility studies and investigations and technical enquiries and tests in respect of the Premises, including in particular the results of on site geotechnical and environmental investigations;
  - (ii) the WAPC consenting to the Lease pursuant to the requirements of the *Planning & Development Act 2005*;
  - (iii) the Lessee entering into appropriate arrangements with services providers (including Western Power and the Department of Water) for the provision of essential services to operate the Wave Park;
  - (iv) the Lessee obtaining the Development Approvals on terms satisfactory to the Lessee and the Lessor (each acting reasonably);
  - (v) the Lessee obtaining 100% of the required unconditional project finance to construct the Development to operating stage, on terms satisfactory to the Lessee in its absolute discretion together with a project budget detailing construction costs for the Development;
  - (vi) a demolition permit being issued to the Lessee for the demolition of the Bowling Club Premises (Demolition Permit);

**CONFIDENTIAL ITEM M17/5544 - GROUND LEASE AGREEMENT FOR WAVE PARK SURF SPORTS RECREATION & LEISURE FACILITY (REC) (CONFIDENTIAL ATTACHMENT)**

- (vii) the Lessee obtaining a Building Permit enabling the commencement of the Development; and
- (viii) the Lessee providing to the Lessor the Lease Guarantee and the Rehabilitation Guarantee,

by 28 February 2019, or such later date as may be agreed by the Parties in writing and subject to the prior approval of the Council of the Lessor (Sunset Date).”

**3. Notes the following ground lease terms as documented in the “lease schedule” attaching to the agreement**

**“Item 1 Land & Premises**

**(1) Land**

- (a) Lot 39 on Diagram 17693 being the whole of the land comprised in Certificate of Title Volume 1185 Folio 584 (Lot 39); and
- (b) Reserve 35486, Lot 9789 being the land comprised in Crown Land Title LR3141 Folio 868 (Lot 9789).

**(2) Premises**

- (a) Subject to paragraph (b) below, that part of the Land identified on the Premises Plan as “Lease Area” and having an approximate area of 4.1 hectares.
- (b) The Lessee and Lessor agree that:
  - (i) the Lessee must obtain, within 3 months of the Commencement Date, a survey of the Premises at its expense (Survey); and
  - (ii) upon approval of the Survey by the Lessor, this Lease will be varied such that the sketch annexed hereto as Annexure 2, will be replaced by the Survey and become the Premises Plan.

**CONFIDENTIAL ITEM M17/5544 - GROUND LEASE AGREEMENT FOR WAVE PARK SURF SPORTS RECREATION & LEISURE FACILITY (REC) (CONFIDENTIAL ATTACHMENT)****Item 2 Term  
If:**

- (a) the Condition Precedent in clause 2.1(a)(iii)(A) or (B) is satisfied, the term for the lease of the Premises will be 30 years; or
- (b) the Condition Precedent in clause 2.1(a)(iii)(C) is satisfied, then the following will apply:
  - (i) the term for the lease of the Premises excluding Part of Lot 9789 will be 30 years; and
  - (ii) the term for the lease of Part of Lot 9789 will be 21 years.

**Item 3 Further Term**

- (a) First Further Term  
10 years
- (b) Second Further term  
10 years

**Item 4 Commencement Date**

10 Business Days from the date that all of the Conditions Precedent are satisfied.

**Item 5 Rent**

- (1) Subject to paragraph (2) below, \$700,000 (Seven hundred thousand dollars) per annum plus GST, payable monthly in advance and as varied from time to time in accordance with the terms of this Lease.
- (2) The Lessor agrees to provide the Lessee with a rent free period of 6 months commencing on the Date for Completion (Rent Free Period). Provided that should the Condition Precedent in clause 2.1(a)(iii)(A) be satisfied, the Lessor agrees to provide the Lessee with an additional rent free period of 4 months such that the Lessee will be granted a total rent free period of 10 months. To avoid doubt, the rent free period shall commence on the Date for completion and continue for a period of 6 months or 10 months (as the case may be), with rent payments commencing on the date that is 6 months or 10 months (as the case may be) from the Date for Completion (rent Commencement date).

**CONFIDENTIAL ITEM M17/5544 - GROUND LEASE AGREEMENT FOR WAVE PARK  
SURF SPORTS RECREATION & LEISURE FACILITY (REC) (CONFIDENTIAL  
ATTACHMENT)****Item 6 Rent Review Dates****CPI Review dates**

Each anniversary of the Rent Commencement Date in each year of the Term (including any Further Term and any period of holding over, if applicable), except the dates which are a Market Review Date.

**Market Review dates**

Every fifth year of the Term (which includes any Further Term and any period of holding over, if applicable) on the anniversary of the Rent Commencement Date.

**Item 7 Required Purpose**

Wave Park and any lawful ancillary use permitted in respect of the Premises under the provisions of the Metropolitan Region Scheme.

**Item 8 Amount of Lease Guarantee**

The amount of the Lease Guarantee shall be at any point in time during the Term or any Further Term equal 12 months Rent under this Lease. As at the Commencement Date, the required amount will be \$700,000.

**Item 9 Rehabilitation Guarantee**

\$(to be determined by the Expert], as reviewed from time to time in accordance with the requirements clause 13.

**Item 10 Review Dates – Rehabilitation Guarantee****CPI Review dates**

Each anniversary of the Commencement Date in each year of the Term (including any Further Term and any period of holding over, if applicable). Except the dates which are a Market Review Date.

**Rehabilitation Review Dates**

Every fifth year of the Term (which includes any Further Term and any period of holding over, if applicable).

**CONFIDENTIAL ITEM M17/5544 - GROUND LEASE AGREEMENT FOR WAVE PARK SURF SPORTS RECREATION & LEISURE FACILITY (REC) (CONFIDENTIAL ATTACHMENT)****Item 11 Additional Terms and Conditions****11.1 Living Stream**

- (1) Subject to paragraph (2) below, the Lessee agrees to pay to the Lessor \$50,000.00 (or such lesser amount as may be agreed between the Parties in writing) as a contribution towards the environmental costs incurred by the Lessor in connection with the upgrade of the “Living Stream” (Living Stream Contribution).**
- (2) The Parties acknowledge and agree that the Living Stream Contribution will be offset against any additional cost that may be imposed by a relevant Authority in the Development Approval to the extent that it applies to the Living Stream Drain.**

**11.2 Café to be available to public**

**The Lessee must ensure that the café facilities to be operated by the Lessee as part of the Development will have a general public access component at no cost at all times the Wave Park is open and operational.**

- 4. That the Council includes a clause 30 to the Ground Lease to read as follows;**

**“1 LEASE DEPOSIT**

- (1) The Lessee must pay to the Lessor the Lease Deposit by the Lease Deposit Due Date.**
- (2) If the Lease Deposit is not paid by the Lease Deposit Due Date, or it is paid (fully or in part) by a cheque which is dishonoured on its first presentation, the Parties agree that this Lease is null and void.**
- (3) The Lessee and the Lessor acknowledge and agree that:**
  - (a) the Lease Deposit will be held on trust by the Lessor; and**
  - (b) in the event of a dispute, the Lessor agrees to hold the Lease Deposit and only deal with the Lease Deposit in accordance with a court order.**
- (4) Subject to paragraph (5) of this clause, the Lease Deposit is non-refundable.**

**CONFIDENTIAL ITEM M17/5544 - GROUND LEASE AGREEMENT FOR WAVE PARK SURF SPORTS RECREATION & LEISURE FACILITY (REC) (CONFIDENTIAL ATTACHMENT)**

- (5) **Sunset Date, the Lessor is satisfied (acting reasonably) that the Lessee**
- (6) **The Lessee acknowledges and agrees with the Lessor that the Lease Deposit may be refunded to the Lessee in the event that:**
  - (a) **the Lessor is unable to satisfy the Lessor's Conditions Precedent by the Sunset Date; or**
  - (b) **if any the Lessee's Conditions Precedent have not been satisfied by the Sunset Date, the Lessor is satisfied (acting reasonably) that the Lessee has used best endeavours to satisfy the Lessee's Conditions Precedents by the dates provided in clause 2.1 or in any event by the Sunset Date. The Lessee must provide to the Lessor evidence within a reasonable period of time, as to the steps and actions taken by the Lessee to satisfy the Lessee's Conditions Precedent.**
- (7) **The Parties agree that the Lease Deposit will be repayable to the Lessee on satisfaction of the Lessee's Conditions Precedent by the Sunset Date.**

*Lease Deposit means the amount of \$100,000;*

*Lease Deposit Due Date means the date that the Lease is executed by the Parties;*

5. **That the Council includes a clause 31 to the Ground Lease to read as follows;**

**"31 Notwithstanding the indicated location of the Car Park Works on the Premises Plan, the Council does not support the location of such Car Park Works on the north eastern corner boundary of the Premises Plan and will make comment to that effect to the relevant approval assessing agency at the appropriate time."**
6. **That the Council amends clause 20.1 to the Ground Lease to read as follows;**

**"20.1 The Lessee must not assign the leasehold estate in the Premises nor sub-let, part with possession, or dispose of the Premises or any part of the Premises without the prior written consent of the Lessor and any other person whose consent is required under this Lease or at law."**
7. **That the Council Notes that rates and taxes become payable from the commencement date as defined in the lease.**
8. **That the Council Delete clauses 9.7(2) and 9.7(3).**

**CONFIDENTIAL ITEM M17/5544 - GROUND LEASE AGREEMENT FOR WAVE PARK SURF SPORTS RECREATION & LEISURE FACILITY (REC) (CONFIDENTIAL ATTACHMENT)**

- 9. That the Council add to recommendation 1, as amended in this resolution, with the matter to be referred to a Special Meeting of Council in the event that the parties can't agree to execute the lease.**

At 1.17am the Mayor submitted the substantive motion as amended, which was declared

**CARRIED (7/4)**

<b>Vote Result Summary</b>	
Yes	7
No	4

<b>Vote Result Detailed</b>	
Cr Aubrey	Yes
Cr Foxtton	Yes
Cr Phelan	Yes
Cr Robertson	Yes
Cr Wieland	Yes
Cr Woodall	Yes
Mayor Aubrey	Yes
Cr Barling	No
Cr Barton	No
Cr Pazolli	No
Cr Schuster	No

At 1.19am Cr Aubrey moved, seconded Cr Schuster –

**That the meeting come out from behind closed doors and the public be invited back into the meeting.**

At 1.19am the Mayor submitted the motion, which was declared

**CARRIED UNANIMOUSLY (11/0)**

**11. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

Nil.

**12. MOTIONS WITHOUT NOTICE BY ABSOLUTE MAJORITY OF THE COUNCIL**

Nil

**13. IDENTIFICATION OF MATTERS FOR WHICH MEETING MAY BE CLOSED**

Nil.

**14. CLOSURE**

There being no further business to discuss, the Mayor declared the meeting closed at 1.20am.